S. Hrg. 99-606

ACCESS TO PUBLIC AND PRIVATE LANDS

HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

ACCESS TO PUBLIC AND PRIVATE LANDS

ROCK SPRINGS, WY, MARCH 15, 1986

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE
59-892 O
WASHINGTON : 1986

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S311-41

59-892 0 - 86 - 1

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ACCESS TO PUBLIC AND PRIVATE LANDS

SATURDAY, MARCH 15, 1986

U.S. SENATE, SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION, COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Rock Springs, WY.

The subcommittee met, pursuant to notice, at 9 a.m., at the Rock Springs City Hall, Rock Springs, WY, Hon. Malcolm Wallop, presiding.

Present: Senator Wallop

Also present: Tony Bevinetto, professional staff member; and Thomas B. Williams, professional staff member for the minority.

OPENING STATEMENT OF HON. MALCOLM WALLOP, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator WALLOP. I wish everybody good morning. Those who have had to travel to get down here, those who are here are at least here, it's a nice bright Wyoming morning.

Today's hearing before the U.S. Senate Subcommittee on Public Lands, Reserved Water and Resource Conservation will complement a workshop which I sponsored that was held by the President's Commission on Americans Outdoors on March 10 in Washington, which focused on recreation on private lands. Today's hearing expands that subject and is structured to hear testimony on four major topics in panel discussions of 1 hour each. The panels are as follows:

First, the assessment, identification and definition of public and private land access policies, laws and practices.

Second, the private and commercial users of private and public lands who need or desire access and how the patterns of access develop.

Third, the identification of access problems, the need to resolve or reduce conflicts, current strategies and agreements for providing access on public and on private lands.

Last, the solutions and recommendations for resolving problems and the recommendations for administrative or legislative change.

In line with that there was a press release from my office which had been widely and badly reported locally. It has nothing to do with what—I have no idea, except that I know there is a problem that lies out there, that is of interest for everybody to solve, because the ultimate loser in a conflict would be the one that can't do anything about the conflict, and that's the wildlife resources and the natural resources of this State.

The object here is not to find villains but to examine the problems with access onto public and private land, and to explore constructive ways that private landowners, public managers, resource users and recreationists can work together. Two Wyoming surveys revealed that two of our larger industries, tourism and recreation, and agriculture, are in need of a major transfusion. The Wyoming Recreation Commission, in a 1985 State Comprehensive Outdoor Recreation Plan, which the State ran, discovered that over 80 percent of those questioned did not have some opportunity to enjoy Wyoming's three most popular activities, fishing, hunting, and camping, because of availability and access, and I find that a very difficult statement to comprehend, and would intend to pursue that a little while we're going on, but it is indicative of some problem.

There is another survey, at the same time, headed by Andrew Vanvig, agricultural economist, and Samuel J. Hundley, Wyoming Crop and Livestock Reporting Service, revealing more than half of Wyoming's farmers and ranchers could go out of business in 5 years. This was confirmed by the report funded by the Wyoming's Futures Project.

You may ask, why the interest in recreational access to private land? The answer is that all users, whether recreationists, resource users, private landowners, or the government, have too much to gain, and even more to lose, for us not to be interested.

No one in our State can dispute the importance of wildlife. Over $500 million a year is spent in Wyoming on wildlife resources. People come here because we have the Nation's largest elk herd, the largest herd of Shiras moose, and the world's largest population of pronghorn antelope. But, we also have bighorn sheep, mountain goat, black bear, and excellent fishing.

Private landowners are essential to maintain these wildlife resources. For instance, the Wyoming Game and Fish Department only estimate that 58 percent of the forage consumed by antelope is on private land. That may run higher for deer.

One of the dangers in public policy is that we sometimes never see the forest for the trees, and fail to ask some very fundamental questions about alternatives. And here today we're asking for basic information on these questions:

Have we overlooked the private lands as additional recreational opportunities? Is there a way to reduce the conflicts over access? Is there a way in which those on the land who are suffering a bad economic structure can be compensated for the resources which they protect?

And while America's public lands represent one-third of the Nation's surface area, that still leaves two-thirds of the lands in private ownership, and these private lands predominate where the population is densest. Wyoming is the ninth largest State with 62.7 million acres, and only 42½ percent of the State is in private land ownership.

The workshop I mentioned in Washington last Monday convened for the express purpose of bringing together private landowners and recreationists to explore the issues related to recreation on private land. A group of experts tried to confront the issues and discuss solutions that would contribute to the needs of Americans, while at the same time protecting the legal rights of a private landowner. Two major concerns that were raised there were the liability issue and the forced condemnation.

The liability of private landowners in relation to public recreation use has a long background in common law. Those who enter the premises of another have been traditionally divided into three categories: trespassers, invitees, and licensees. Each have a different standard of responsibility. Courts have muddied these distinctions in the last years and have generally placed a stricter standard of responsibility on the landowner and on public land administrators. In some States, the traditional distinction between licensees and invitees has been abandoned, and the higher standard of reasonable care has been applied to anybody who enters the premises of another.

And the practical result of this increased potential for liability is to reduce the likelihood that the public will find unrestricted access. Landowners need an added risk like a plague of crickets in the middle of a drought.

Within the past 20 years, 44 States have enacted statutes to partially limit liability, and Wyoming's been one of them.

Wyoming statute eliminates the duty of a landowner to ensure that the property is safe for the public who use that property recreationally. Although the landowner still remains liable for willful misconduct and if a fee is charged.

Several situations may render the landowner totally vulnerable, and these possibilities include: charging a fee for recreational use, using the property primarily for commercial purposes, or when the user is expressly invited onto the premises.

Generally, those who charge legitimate fees for recreation on private land lose their protection under these statutes. They, like others, have found problems obtaining liability insurance with reasonable premiums.

Other than liability, another concern discussed at the workshop was the fear of private landowners of losing their land. One graphic example came from a rancher, a huge and devoted conservationist, and founder and president of a thing called Operation Stronghold in Chiloquin, OR, and then for the record, I will include his entire article before the committee.

But this man, Dayton Hyde, spent a considerable amount of his resources, significantly improved habitat on his land to encourage wildlife. And "fear," he said, was one of the reasons the livestock industry does not embrace the idea that they become wildlife managers.

What he did was he built wildlife habitat on his land, built wetlands on his land where none had existed, only to find the Government suddenly interested in its protection, and began to make zoning moves, and even condemnation moves, to protect what he had established. Now, that is not the way to encourage people to get into this kind of business.

Now, neither the Federal Government nor Wyoming can live in the past. There was a time when it was not necessary to fence private lands. People moved across private lands and on public lands with respect to both. But with the increasing pressure to use public lands for recreation purposes, coupled with the increase in West population, the private landowner has acquired legitimate reasons to fence off private property, or to limit access.

In Wyoming, with our checkerboard pattern of ownership, fencing off portions of privately owned squares of land mingled with public lands meant enclosing Government acreage on it sometimes, and this resulted in conflict. And it's pitted the privilege landowner, the land manager, and the recreationist against each other.

So for today we will take testimony on the public's access onto public lands and the private landowners' right to protect private property. Each has a legitimate right. And perhaps today we can capture the magnitude of the problem in Wyoming, and begin to form a foundation for making a marriage; a planned and happy marriage and not a shotgun wedding.

[The article submitted by Senator Wallop follows:]

CONFLICTS IN THE USE OF RANGE—CAN THEY BE RESOLVED?

(By Dayton O. Hyde [1])

On our ranges we face either the best of times or the worst of times, depending upon where we go from here. For various reasons the system we now have is not working. We have encouraged public participation in land use issues but not enlightened public participation. Emotional involvement is good as long as it is accompanied by facts and common sense.

If we think of our natural resources as an orange, there are many user groups competing for a slice of that orange. When one group is able to muster enough political force to gain a larger slice, it follows that the other slices have to get smaller.

Recreationists think of our ranges in terms of recreation and wildlife; agriculture sees a source of forage for livestock. The fishermen see our rivers as fishing; industrialists see them as sources of power, and means of transportation of raw materials in and finished products out. City managers see streams as handy ways to remove wastes; white water rafters see them as a source of quality recreation. To the farmer and rancher they are the life blood of agriculture. We select from the pool of facts to build a case for our own particular interest, and become hard nosed in our claims. Seeking funding or political support for our causes, we deliberately mislead the public, seemingly unaware that this force may continue its involvement and one day become the tail that wags the dog, or the seed that becomes a weed in our garden.

Shifts in the balance of political power have made the multiple-use concept an abused child of the system. Public agencies have been just as guilty as organizations in disorientation of the public in wildlife and land use issues. I know of few other issues that can illustrate my point better than the highly charged issue of grazing of privately owned livestock on public lands. The public has been led to think that the opposite of grazing is nongrazing and that if such a condition were achieved the land would benefit.

There are certain realities the public has not been taught: the devastating effects of a buildup of combustible vegetation, loss of vegetative diversity including wild flowers and forbs when grazing is excluded, and the long-range down turn in health and palatability of beneficial plant species. Another is the hastened eutrophication of wetlands by coarse vegetation when production is left to rot.

Public agencies have created a myth that they are the sina qua non of wildlife existence when actually most public land areas are not independent systems, but rely heavily on adjoining private lands. Sixty percent of our forests in the continental United States are private. Eighty percent or more of our wildlife is dependent not upon public lands but upon private lands for habitat. With increasing land use pressures, it will not be long before the only privacy left our wildlife will be on private lands.

In range areas especially you find small privately owned areas furnishing water, food, shelter, and privacy that make thousands of acres of adjoining public land viable for wildlife.

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[1] Rancher, conservationist, and founder and president of Operation Stronghold, Chiloquin, Oregon.

And yet, recently, when newspapers such as the Wall Street Journal were full of letters to the editors from critics of grazing policies, the agencies were curiously silent. No one pointed out to the public the rest of the story, that we are heavily indebted to those ranchers who graze public lands for their great contributions to the public's wildlife, that without private lands much of our finest wildlife habitat would be lost.

At a time when agriculture is facing financial disaster, no one has pointed out that when the small farm or ranch family is forced off the land and corporate agriculture without conservation or wildlife conscience takes over, then wildlife is one of the main losers. Wildlife has an immense stake in the well-being of American agriculture. Of all the states, my own state of Oregon leads the way in land use socialism, and this philosophy has tragically backfired for wildlife. State agencies have failed to educate the public as to the great contribution made to wildlife by private lands.

The landowner who builds wetlands or other forms of wildlife habitat upon his private land, or otherwise encourages the presence of wildlife or a viable fishery, suddenly finds that the state has moved in to zone his lands and restrict his management options, thereby drastically decreasing his equity in his land without just compensation. Those landowners who would be willing to sell conservation easements to the public suddenly find that the state legislature has taken those rights and left them with nothing to sell.

Public agencies have become adversaries of the landowner. When land is taken by Right Of Eminent Domain as a roost for eagles, the rest of the landowners look to their own eagle populations and wonder how smart it is to keep them. When wildlife commissions earmark private lands as important to wintering elk and move in to restrict the landowners by zoning, other landowners look to their own wildlife populations and have doubts.

On my own private land in Oregon, I put 25 percent of my land back into marshes and initiated research on crane behaviour, which has helped bring the whooping crane back from near extinction. I also built a lake with 3½ miles of shoreline just for wildlife. This body of impounded snow water now makes thousands of arid acres of adjoining national forest viable for wildlife, where, formerly, in July there wasn't water enough for a chickadee to drink.

Eagles and ospreys have moved in to feast on trout weighing up to 14 pounds. Thousands of ducks, geese, and swans rest there in migration; hundreds breed there in the summer. This past summer, within 100 yards of my cabin, 43 species of birds nested where only 4 species nested before. I have done my riparian work along my river and built a trout fishery as well as a wildlife spectacular which biologists tell me far exceeds public lands in quality.

Seven years ago, I purchased a run-down ranch in the John Day valley and turned it into a wildlife haven, restoring its public and private ranges alike to productivity. I wanted another showcase where I could show the public just how vital and exciting properly managed private land could be to wildlife. The place has exceeded my wildest expectations.

But now? You're right. My land has been zoned. I am being regulated for wetlands that weren't there before I created them. Like most of my neighbors I can save myself from financial disaster only by some creative land management, but the legislature has cut out most of my options.

This is not just an Oregon problem. About 4 years ago, excited by the response of wildlife to my private land habitat management, I started a nonprofit foundation called Operation Stronghold, dedicated to the creation of wildlife habitat on private lands. We now have over 3 million acres of land dedicated to programs of significant value to wildlife.

The members are ranchers, farmers, and forest owners who, like me, enjoy personal involvement with wildlife by creating habitat. Our projects are as varied as our lands; we do everything from restoring native prairies to planting for butterflies, building nestboxes for sparrowhawks, creating wetlands, riparian restoration, you name it. Instead of "No trespassing," our signs say "Private land wildlife stronghold. This landowner cares. He has dedicated this property to a wildlife and conservation program of significant value. Wildlife need privacy. Do not enter without written, dated permission."

We are dedicated to proving to the public that private land is special and serves a function public land simply cannot serve. We don't wish to compete with the public resource but rather to enhance it by our contributions of habitat, and to set a standard for public land managers to shoot at. We have forged a few private grants and our membership dues into a good common sense, practical program for wildlife that has helped wildlife in several countries and has yet to cost the public a penny.

But more and more as I address private landowners around the country, I hear doubts. Often now landowners tell me, "Look, you don't understand. We would like to do our share for wildlife but we are afraid if we create something worthwhile, the public will take it. It's just plain easier to sterilize the land."

There are some public land managers who see other agencies and the private landowner as competition for the wildlife management dollar. But if those who use our land resource want a larger slice of the orange, we had best make the orange larger. We can do this by developing a better working relationship between the agencies and private landowners, and provide both with incentives.

We face exciting times for wildlife if agencies responsible for resource management will initiate a coordinated venture with the private sector in creation and maintenance of the wildlife habitat, and if an enlightened public will accept the funding of reasonable incentives so that the private landowner can consider raising wildlife habitat an alternative to standard crops without fear that the public will take his rights without just compensation.

Senator WALLOP. Let us turn for a moment to the mechanics of the hearing. As panelists, you know you have been invited because of your involvement, your expertise and knowledge of this issue, or because of land ownership and management responsibilities. I'm going to figure about an hour per panel, and I would ask that the witnesses limit their presentation to 5 minutes. Their whole statements will go in the record. I want to rely on—allow for some interchange of ideas. If we have time in these hours, I'll ask for some participation, requests or statements from the audience.

If you didn't have time to provide a complete written statement, the hearing record will remain open for 3 weeks until April 7 of this year, and you can submit expanded or revised statements to my State offices, or the subcommittee office in Washington DC.

If you're interested in receiving a printed copy of the hearing record, put your name and address on the mailing labels on the tables out here in the lobby, and we'll send a copy in about 4 months.

Please hold on to your statement until the panel is called and the staff will collect them at that time.

I appreciate very much you taking the time to come here today to help solve the problems and to contribute to the solutions which are of benefit to us all.

Before we begin, I would like also to say this is a formal hearing of the Subcommittee on Public Lands, Reserved Water and Resource Conservation of the Energy and Natural Resources Committee of the Senate.

Here with me today are Tom Williams of the minority staff and Tony Bevinetto of the majority staff on that committee and on this subcommittee. Kate Dupont, who works with me in my office on these issues, and Pam Redfield of my Lander office, Billee Jelouchan of the office here, Byra Kite of the Cheyenne office and Robin Bailey of Senator Simpson's office. I want to thank them for their interest and help in setting this up.

Now, let me call the first panel, which is Hillary Oden, State Director of the Bureau of Land Management; Stan Tixier, Regional Forester for the Forest Service, in Ogden; Howard Schrinar, Wyoming State Land Office; Larry Kruckenberg of the Wyoming Game and Fish; and Calvin Ragsdale of the Western Wyoming Livestock Users Association.

If you'd all come up here, I think, and just give your statements from here, we'll—I think we'll find it easier because of these microphones.

~~I don't~~ mean to be intimidating, but I'm going to run a clock. I don't mean to stop you in midsentence when we get to the end of that, but I do hope we'll have some time for a little dialog amongst ourselves.

Hillary, would you begin, and my thanks.

STATEMENT OF HILLARY ODEN, STATE DIRECTOR, BUREAU OF LAND MANAGEMENT, CHEYENNE, WY

Mr. ODEN. Thank you, Senator. I appreciate the opportunity to appear here today to discuss issues of access to public lands and how the Bureau of Land Management is addressing them.

The Bureau of Land Management in Wyoming manages 17.9 million acres of public lands. That's about 30 percent of the total land area in Wyoming.

Our policy is to acquire only those interests, those lands and interests in lands needed in order to manage, protect, develop, maintain, and use resources on public land and to provide access for public use and enjoyment of such lands. These acquisitions are accomplished in accordance with applicable authorities and available funds and in conformity with land-use plans that apply to the area involved. Access needs are identified in the planning process which has an opportunity for public participation in several of its stages.

Through the Bureau planning system, a transportation plan is established which identified access to public lands. Primarily we try to address our access to the larger blocks of public lands. But refusal to allow access to any size parcel could become an issue. The transportation plan is the basis for developing the easement acquisition program, in that we acquire easements under the guidelines listed under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1971. Basically, that results in having the proposed easement appraised and offer fair market value to the landowner.

Unless an easement providing legal access is obtained, or the private landowner grants permission, neither the Bureau of Land Management or the public has the right to cross private lands to reach public lands. And in trying to look after this 17.8 million acres of public land in Wyoming, the Bureau of Land Management personnel must cross private lands on a regular basis. Our policy is to make every effort to contact private landowners for permission to cross their lands or use their private road.

Recreation is one of the things that's specifically identified in the Federal Land Policy and Management Act as one of the multiple uses of the public lands. Outdoor recreation is therefore one of our major responsibilities in our management of the public lands. But unless legal access to the public lands is available, the general public cannot take advantage of the recreational opportunities that the public lands afford.

Public lands are managed under the Federal Land Policy and Management Act of 1976. This law does not have a specific provision relating to public access; however, there are several other laws that have had an impact on access to public lands. For example, as a result of the homestead laws enacted in 1862 to 1916, many scattered tracts of public land in Wyoming are surrounded by private land. The railroad grant laws of 1862 and 1864, which granted to the railroad on each side of it's right-of-way, resulted in a large checkerboard pattern of public and private lands across southern Wyoming. These and other laws such as laws creating the national forests created the land pattern which has resulted in the access problems we have today.

As I mentioned, the Federal Land Policy and Management Act of 1976 is a major authority. Section 205 of that act provides the Bureau of Land Management with the basic authorities to acquire easements when they're consistent with the departmental mission and applicable land use plans. The power of eminent domain may be used to acquire access to public lands.

Section 307 allows the BLM to accept contributions or donations of rights-of-way.

Section 318 allows the Bureau of Land Management to use the land and water conservation fund to purchase lands that are necessary for proper management of public lands which are of primary value for outdoor recreation purposes; however, an appropriation of funds by Congress related to specific projects is necessary.

The Federal-Aid Highway Act of 1962 authorizes appropriations for public lands, development roads and trails. These are defined as roads and trails which are of primary importance for the development, protection, administration, and utilization of public lands and resources.

The Wild and Scenic Rivers Act of 1968 provides authority to acquire easements for public access to wild and scenic rivers. Similar with the National Trails System Act of 1968.

There are a number of other laws but those are the main ones.

The actual practices of the Bureau in dealing with access to the public lands are in accordance with the policies and laws I just mentioned.

In Wyoming we require Bureau right-of-way acquisitions to be negotiated to include general access rights for the general public. The only exception to this would be for an overriding reason that far outweighs the public interest for access. During the past years, 12 years, out of 195 easements we have obtained, all but 30 have included the right of public access.

We acquire easements by exchange and by reciprocal right-of-way grant through which we provide an easement across public land in exchange for one across private land.

We also cooperate with other Federal, State, and county agencies and private organizations in the development of acquisition plans. We work with the Forest Service, the Wyoming Game and Fish Department, State Land Commissioner, Wyoming Wildlife Federation, Wyoming Stockgrowers Association, and counties.

It would take many years to gain access to every parcel of public land. As I said, our priority is to work on the larger tracts and any tracts of major public interest. And we do believe that acquisition of legal access is an essential program and must be continued.

[The prepared statement of Mr. Oden follows:]

STATEMENT OF HILLARY ODEN, STATE DIRECTOR, WYOMING, BUREAU OF LAND MANAGEMENT BEFORE THE PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION SUBCOMMITTEE, UNITED STATES SENATE, COMMITTEE ON ENERGY AND NATURAL RESOURCES ON PROBLEMS OF ACCESS ON PUBLIC AND PRIVATE LANDS

I appreciate the opportunity to appear here today to discuss issues of access to public lands and how the Bureau of Land Management is addressing them.

The BLM in Wyoming manages 17.8 million acres of public lands . BLM's total responsibility involves about 30% of the land in Wyoming.

The Bureau of Land Management's policy is to acquire only those lands and interests in lands needed to manage, protect, develop, maintain, and use resources on public land and to provide access for public use and enjoyment of such lands. These acquisitions are accomplished in accordance with applicable authorities and available funds and in conformity with land-use plans that apply to the area involved. Access needs are identified in the planning process which has an opportunity for public participation in several of its stages.

Through the Bureau planning system, a transportation plan is established which identifies access to public lands. Primarily, the BLM addresses access to large blocks of public lands. But refusal to allow access to any size parcel could become an issue. The transportation plan is the basis for developing the easement acquisition program. We acquire easements under the guidelines listed in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1971. Basically, we have the proposed easement appraised and offer fair market value to the landowner.

Often the public does not understand what bureau access roads are. Bureau roads, though administered by a public agency, and generally open to use by the general public, are not public roads in the sense that county and state roads and federal highways are. Bureau roads are subject to rules and regulations of the Secretary of the Interior, and, although public use is generally allowed, roads may be closed or use restricted to fulfill management objectives such as protecting public health and safety or preserving resources. Bureau roads may also be subject to state and other federal regulations as necessary to protect public health and safety.

Bureau roads are not maintained for year around public use. They are not regularly graded or gravel surfaced nor are they plowed in the winter.

Unless an easement providing legal access is obtained, or the private landowner grants permission, neither the BLM nor the public has a right to cross private lands to reach public lands. In overseeing the management of 17.8 million acres of public land in Wyoming, BLM personnel must cross private lands on a regular basis. Before crossing private lands, BLM personnel make every effort to contact private landowners for permission to cross their land or use a private road.

Recreation is specifically identified in the Federal Land Policy and Management Act as one of the multiple uses of the public lands. Outdoor recreation is therefore one of BLM's major responsibilities in its management of the public lands. Unless legal access to the public lands is available, the general public cannot take advantage of the recreational opportunities that the public lands afford.

Problems of access are attributable to many sources.

Some people do not respect private property rights. They leave gates open, bring pets that harass livestock, drive vehicles where they should not, leave litter, sight in their rifles on signs and sometimes mistake livestock for game.

On the other hand, some landowners have illegally posted public lands at public access points. Some landowners have accosted people on public land, telling them they are trespassing on private land and threatening to have them arrested unless they pay a fee to the landowner.

BLM is actively attempting to improve access. We have had success in many areas. For instance, in Wyoming each of our four districts, consisting of Casper, Rawlins, Worland and Rock Springs, has an easement acquisition specialist. These employees spend a large portion of their time on transportation planning and easement acquisition. This program is at times constrained because of the private landowner's reluctance to grant easements that allow public uses.

The public lands are managed under the Federal Land Policy and Management Act of 1976. That law does not have a specific provision relating to public access. However, there are several other laws that had an impact on access to public lands. For instance, as a result of the homestead laws, enacted from 1862 to 1916, many scattered tracts of public land in Wyoming are surrounded by private land. The railroad grant laws of 1862 and 1864, which granted to the railroad on each side of its right-of-way, resulted in a large checkerboard pattern of public and private land across southern Wyoming. These and other laws such as laws creating the National Forests created the land pattern which has resulted in the access patterns we have today.

There are a number of laws that have provisions relating to acquisition of easements. To name a few:

The Federal Land Policy and Management Act of 1976 is a major authority.

> Section 205 of that Act provides the BLM with the basic authority to acquire easements when they are consistent with the Departmental mission and applicable land use plans. The power of eminent domain may be used to acquire access to public land.
>
> Section 307 allows the BLM to accept contributions or donations of rights-of-way.

> Section 318 allows the BLM to use the Land and Water Conservation Fund to purchase lands which are necessary for proper management of public lands which are primarily of value for outdoor recreation purposes. This includes access to recreational areas. However, an appropriation of funds by Congress related to specific projects is necessary.

The Federal-Aid Highway Act of 1962 authorizes appropriations for public lands development roads and trails. These are defined as roads and trails which are of primary importance for the development, protection, administration, and utilization of public lands and resources.

The Wild and Scenic Rivers Act of 1968 provides authority to acquire easements for public access to wild and scenic rivers.

The National Trails System Act of 1968 contains the same type of provision for national trials.

There are a number of other laws dealing with access.

The actual practices of the Bureau in dealing with access to public land are in accord with the policies and laws I've just mentioned.

In Wyoming, we require Bureau right-of-way acquisitions to be negotiated to include access rights for the general public. The only exception to this would be for an overriding reason that far outweighs the public interest for access. During the past 12 years, we have obtained about 195 easements. All but 30 have included public access.

We acquire easements by exchange and by reciprocal right-of-way grant through which we provide an easement across public land in exchange for one across private land.

We also cooperate with other federal, state and county agencies and private organizations in the development of acquisition plans. We work with the Forest Service, the Wyoming Game and Fish Department, the State land Commissioner, the Wyoming Wildlife Federation, Wyoming Stockgrowers Assocation and counties.

It would take many years to gain access to every parcel of public land. Our priority is to work on the larger tracts and any tracts of major public interest.

Acquisition of legal access is an essential program that must be continued.

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In addition to our ongoing acquisition program, there are several approaches that might be used to address access. Some of these may require changes in law or regulations. Others would require changes in program emphasis.

1. Cooperative Agreements

BLM uses a cooperative program for a variety of purposes except for livestock grazing. These agreements could be used to gain access to public lands from private landowners. We would try to provide some service to the private landowners in exchange for access across private lands. This could be provided by the BLM or through volunteer services from third parties such as Audubon Society, Wildlife Federation, ORV clubs, sportsmen associations.

2. Limiting Liability On Private Land Resulting From Increased Public Use

Some private landowners are reluctant to allow the general public use of and/or passage over their private lands due to the liability assumed. They feel they may be sued if a member of the public has an accident while on the private lands. This litigation could be costly to defend.

This suggestion needs to be considered in more depth.

3. Expand Reciprocal Right-of-Way Authority To Include All Types of Rights-of-Way.

It might be possible to allow parties involved in reciprocal right-of-way to include other landowners in the agreement and to include public access as one of the stipulations in the right-of-way. The benefits to the private parties would be reduced rights-of-way fees, addtional road maintenance and better signing.

In areas where the ownership pattern is fragmented, the third party might be required to negotiate some type of public access, in strategic places, with the landowner adjacent to the public lands.

4. Nationwide Public Education Program

This would be a public affairs program to educate the public and the landowners on their rights and on restrictions relating to access on public lands. The Secretary's Project Pride is an excellent example of this.

Project Pride is a bureauwide effort to enhance a positive perception of BLM by the public.. It has eight objectives:

-- Improve perception of BLM employees about themselves;

-- Improve Bureau support for adherence to professional standards and principles;

-- Develop an internal and external awareness and appreciation of public land and its varied and valuable resources;

-- Identify and develop an internal and external understanding of BLM and its mission;

-- Continue to improve BLM service to the public;

-- Encourage a public land ethic;

-- Demonstrate to the public our professional public land management capabilities; and

-- Gain recognition of our agency's ability to accomplish land management objectives with the best interest of the American public in mind.

5. Simplify Surface Exchanges (fee) or Trade of Use Agreements

These are two distinctly different possibilities.

Exchanges are a permanent solution to access questions. However, the process can be complex and sometimes time consuming. BLM has had good success with exchanges where mineral values are not an issue.

Trade-of-use agreements would allow a private landowner to control access in some areas while allowing the Bureau to control access in other areas. This would not be a permanent solution but might be used in certain situations.

Before this suggestion could be implemented question of the authority to allow public lands to be closed to public use when covered by a trade-of-use agreement. A trade-of-use agreement might be used as a temporary action pending a formal exchange.

6. Road Identification and Signing

This would involve encouraging the declaration of public roads by the counties and working with the counties so that county roads provide access to public land to the greatest possible extent.

Another suggestion would be to develop a sign program with the counties and other state and federal agencies to better identify public roads in the field as well as on public maps.

7. Access Involvement

We will continue to work closely with other federal and state agencies, such as the Forest Service, the State Game and Fish Department and the State Land Commissioner as well as county agencies and private organizations, such as the Wildlife Federations and the Stockgrowers Association representative, in the development of public access planning.

8. Multiple Agency Hunter Access Operation Respect Program

Another suggestion would be to develop a statewide multiple agency (BLM, Forest Service, State Land Commissioner) hunter access/Operation Respect program to inform the public as to which roads are open to the public, which lands are public, private or state, and which private lands are open to the public. This program could be accomplished by the use of maps and brochures.

OPERATION RESPECT is designed to:

.. Encourage public cooperation with ranchers;

.. Promote respect for property and equipment;

.. Educate the leisure time public about land, livestock, and wildlife;

.. Inform the public about the varied land ownership throughout the State;

.. Teach the "do's" and "don'ts" when using the lands.

9. Land and Water Conservation Funds

Finally, provision might be made for a specific provision for use of Land and Water Conservation Funds for acquisition of recreation easements.

This concludes my prepared statement. I will be pleased to answer questions.

Senator WALLOP. Thank you, Hillary.
Stan Tixier.

STATEMENT OF J.S. TIXIER, REGIONAL FORESTER, FOREST SERVICE, DEPARTMENT OF AGRICULTURE, OGDEN, UT

Mr. TIXIER. Thank you Mr. Chairman. We appreciate the opportunity to join the subcommittee's discussions of access on public and private lands.

I'm Stan Tixier, regional forester, intermountain region of the Forest Service, encompassing the States of Utah and Nevada, and western Wyoming, and southern Idaho. I appear as representative of Max Peterson, Chief of the Forest Service. As you know, Wyoming's in two Forest Service regions.

Access to National Forest System lands is provided through a network of roads under several jurisdictions. This includes: Federal and State highways; local public roads; and the Forest Development Road and Trail System. Not all access to the national forest is by vehicle, so we emphasize the trail part of that System.

The Federal and State highways provide the main arteries to and through national forests. Local public roads include county roads that provide a critical connecting link between forest development roads and the Federal and State highway system. In many areas the principal access problems that we encounter are related to these roads. There is continuing shrinkage of county roads within and leading to the national forests. Rural counties with a sparse, widely scattered population, a low tax base, and containing national forest lands that have scarce revenue producing resources, are especially hard put to provide access and adequate road systems. Often counties abandon a road beyond the last farm or ranch or residence. Or, residents along the road actively seek to have a road abandoned to restrict the public access to private land and to get the national forest land because of vandalism or unauthorized use of private lands. When either event happens, another access to Federal land is lost.

About 1,000 to 1,200 road rights-of-way are acquired each year, most for new national forest development roads and trails. Now, that's on a nationwide basis. In the intermountain region there are approximately 2,900 cases of known right-of-way needs involving about 2,200 miles of road. We process about 100 cases, or 107 miles of road per year, and that's about 3 percent of the identified need. And we expect that to decrease as funding for those activities decreases.

We have a backlog of unsecured rights-of-way in many areas which the public is using to access national forest land but only because of the goodwill of the landowner.

In some areas, another group of roads, not formally on any Government system, often provides access to national forest lands. These roads generally cross a mixture of ownerships. They usually originated many years ago, often before the automobile, and may predate the establishment of the national forests. Some were once public roads but were dropped from the maintenance system of local governments. They are usually low-standard roads, passable only part of the year. Often they serve as substitutes for roads planned but not yet built by the forest service. These are the roads that provide the primary means of access for sportsmen to the national forests, particularly in the West. And this group of roads is the source of most complaints about the loss of access.

Until recent years, public use of these roads was accepted as customary by adjacent landowners and by the public. Denials of use were infrequent since most of the users were local residents. Development of these private lands, with resultant changes in the character or rural landowners, from resident ranchers to absentee owners and from open grazing land to recreation subdivisions, for example, has led to increased opposition to public use of these lands. Closing a road often results in a landowner having a monopoly over the use of the National Forest System land area accessed by that road. As sort of a private hunting area.

On the other side, actions by "sportsmen," I'll put that term in quotes in this context, have led to road closures. Hunting without permission, fence cutting, gates left open and littering can provide the reason for closures by private landowners. Many of these are closed only during hunting season and are left open the rest of the year. We estimate access is lost on at least one road each year on every National Forest within the system.

Section 205 of the Federal Land Policy and Management Act that was referred to earlier, provides specific authority by which the Secretary of Agriculture, as well as the Secretary of the Interior, can acquire access over non-Federal lands by purchase, exchange, donation, or use of eminent domain or condemnation.

Our policy is to acquire, where possible, all interests needed for planned and foreseeable use during the initial acquisition and to acquire the interest in perpetuity to accommodate all forms of multiple use traffic unless the National Forest plan indicates that such full use is not required.

With regard to the use of condemnation to acquire access, we do not regard this authority as a primary tool in resolving access problems. We feel that that's the last resort. In our Intermountain Region we've used this option only one time in the last 7 years. We have the resolution of one case on the Bridger Teton National Forest by condemnation pending.

Mr. Chairman, this does conclude my comments on this panel, and I appreciate the time.

[The prepared statement of Mr. Tixier follows:]

STATEMENT OF
J.S. TIXIER, REGIONAL FORESTER
FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

At a Field Hearing Of The
Subcommittee on Public Lands, Reserved Water and Resource Conservation,
Committee on Energy and Natural Resources,
United States Senate

Concerning Access To National Forest System Lands

Rock Springs, Wyoming

March 15, 1986

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to join the Subcommittee's discussion of access on public and private lands. I am Stan Tixier, Regional Forester, Intermountain Region of the Forest Service, encompassing the States of Utah and Nevada, and western Wyoming and southern Idaho. I appear here today as the representative of Chief R. Max Peterson. The issue before the Subcommittee today is an important one to the Department of Agriculture. Access to Federal lands is an emerging issue, based on the public input we have received in the review of draft National Forest plans. Your deliberations are timely; we look forward to positive results from this hearing.

My testimony will present the laws affecting access to the National Forest System and Forest Service policies and practices that result from those laws. This will be in the context of the National Forest Transportation System. Through this system, access is provided to the lands of the National Forest System. I would also like to point out those problems of access which we confront. Although my remarks will be national in scope, I would like to intersperse comments that are of a more local perspective, reflecting the views of my position and that of my counterparts in the western States. As you requested, I will offer our recommendations for resolving problems of access.

The National Forest Transportation System:

Access to National Forest System lands is provided through a network of roads under several jurisdictions. This includes: (1) Federal and State Highways, (2) Local public roads, and (3) the Forest Development Road and Trail System.

The Federal and State Highways provide the main arteries to and through the National Forests, providing an important means of access. This system includes the 100 percent federally-financed Forest Highways. About 60 percent of this mileage is coincident with Federal-Aid Highway System, intended to connect population centers. Because of the significance of the Federal Aid Highway System to State and local economies, Forest Highways seldom create any barrier to National Forest access.

Local public roads are the "county roads" that provide a critical connecting link between the Forest Development Roads and the Federal and State highway system. In many areas, the principal access problems we encounter are related to these roads. There is a continuing shrikage of county roads within and leading to the National Forests. Rural counties with a sparse, widely-scattered population, a low tax base, and containing National Forest land that is scarce in revenue producing resources are especially hard put to provide adequate road systems. Often, counties abandon a road beyond the last farm, ranch, or residence. Or, residents along the road actively seek to have the road abandoned to restrict the public traversing the private land to get to the National Forest land because of vandalism or unauthorized use of private lands. When either event happens, another access to the Federal land is lost.

The Forest Development Road and Trail System is the final component of the network and is under Forest Service jurisdiction. It is authorized by the National Forest Road and Trail Act (Act of October 13, 1964) and the Federal Highway Act, and funded by annual appropriations. The system lies mostly within the boundaries of National Forest System land. However, since there are about 39 million acres of non-Federal lands within the exterior boundaries of National Forest System units, and large blocks of private land often lie between National Forests and State or Federal highways, some of the system roads must cross private land and thus requires rights-of-way. This component provides the principal means of meeting National Forest access needs. About 1,000 to 1,200 road rights-of-way are acquired each year, most for new Forest Development roads and trails. These rights-of-way are acquired to support dispersed recreation, fire protection, and the management of timber, wildlife, range and other resources. Many rights-of-way recently acquired are for support of the National Trail System. Still, we estimate that more than 20 percent of National Forest System lacks access to fulfill its potential for public use. We have a backlog of unsecured rights-of-way in many areas which the public is using to access National Forest land but only at the suffrance of the landowners.

In some areas, another group of roads, not formally on any government system, often provide access to National Forest land. These roads generally cross a mixture of ownerships. They usually originated many years ago, often before the automobile, and may predate the establishment of the National Forests. Some were once public roads but were dropped from the maintenance system of local governments. They are usually low-standard roads passable only part of the year. Often they serve as substitutes for roads planned but not yet built by the Forest Service. These are the roads which provide the primary means of access for sportsmen to the National Forests, particularly in the West. This group of roads is the source of most complaints about the loss of access. Until recent years, public use of these roads was accepted as customary by adjacent landowners and the public. Denials of use were infrequent since most of the users were local residents. Development of these private lands, with resultant changes in the character of rural landowners, from resident ranchers to absentee owners and from open grazing land to recreation subdivisions, for example, has leed to increased opposition to public use of these lands. Closing a road often results in the landowners having a monopoly on use of the

National Forest lands accessed by that road. Some owners have charged the public to use a road or trail to reach the National Forest. On the other side, actions by sportsmen have lead to road closure. Hunting without permission, fence cutting, gates left open or littering can provide the reason for closures by the private landowner. Many of these are closed only during hunting season and are left open the rest of the year. We estimate that access is lost on at least one road each year on every National Forest.

National Forest Access Laws, Policies, and Practices

Section 205 of the Federal Land Policy and Management Act of 1976 (FLPMA) provides the specific authority by which the Secretary of Agriculture can acquire access over non-Federal lands to units of the National Forest System. This may be accomplished by purchase, exchange, donation, or use of eminent domain.

This authority is exercised for the purpose of acquiring rights-of-way that are needed for the protection, administration, and utilization of the National Forests. Where compatible with National Forest needs, the rights-of-way may also accommodate the utilization and development of resources in other ownerhips upon which communities within or adjacent to the National Forests depend. Our policy is to acquire where possible all interests needed for planned and forseeable future uses during the initial acquisition, and to acquire the interest in perpetuity to accommodate all forms of multiple-use traffic unless the National Forest plan indicates that such full use is not required. We seek to acquire rights-of-way with the least impact on private lands crossed insofar as economically and environmentally feasible. In the Intermountain Region, there are approximately 2,872 cases of known right-of-way needs, involving about 2,207 miles of road. We annually process about 80 to 200 cases per year.

With regard to the use of condemnation to acquire access, we do not regard this authority as a primary tool in resolving access problems. We use it very rarely and only after we have exhausted all other means available to us. We did not condemn any road rights-of-way last year. In the Intermountain Region, we have used this option only three times in the last seven years and resolution of one of those cases on the Bridger-Teton National Forest is still pending. Situations requiring its use are most likely to occur when we seek to acquire road rights-of-way that were formerly county roads but have been dropped from their systems. The local situation may require use of condemnation even though we regard it as essentially the reacquisition of the public's interests.

Recommendations for Resolving Problems of Access:

Let me begin this discussion of recommendations for resolving problems of access by saying that we regard the statutory authority for acquiring Forest Development road access as adequate. The full range of means to acquire access provided by FLPMA enables us to accomplish our program for the National Forest Development Road and Trail portion of the road system needed to serve the National Forest System. This is not to say that we do not encounter administrative difficulties in acquiring access and in resolving access problems.

Acquisition of road access rights-of-way often involve complicated situations and solutions are not easy to achieve. Instead, we believe that there are numerous partial solutions, which when taken collectively and applied over a period of time will achieve the desired results.

At the national level, the planning required by Section 6 of the National Forest Management Act of 1976 (NFMA) provides the means for identifying access needs and the necessary funding requirements. The National Forest planning process places the access issue in the right context and provides the information needed to decide on a program. Individual Forest plans, by identifying the pattern of resource uses throughout the Forest, are the basis for establishing specific access and transportation requirements to meet planned resource management objectives.

Construction of roads through cooperative arrangements with owners of large acreages of timberland intermingled with National Forest land has contributed greatly to improved access. We are actively pursuing this solution informally and by means of interagency agreements among State and Federal agencies.

In this program, joint ownership of the road is obtained by an exchange of easements under the National Forest Road and Trail Act. In such arrangements, the Government obtains the right to use the roads for all National Forest purposes and for the public to use the roads. In cost-sharing the construction, we assume the portion attributable to recreation regardless of ownership of the lands generating that use. We have over 12,000 miles under this arrangement.

Providing access by trails also offers an important means to provide access. In some cases, trails serve as interim access until a road is built. Often, a trail may be the only access needed to serve small areas not reached by roads or to the interior of a National Forest. Trails are seldom a suitable alternative to a road for crossing large blocks of private land lying between the public road system and the National Forest boundary.

As I mentioned earlier, the juncture between county roads and Forest Development roads is where much of our access problems lie. Counties often elect to drop roads from their systems due to high maintenace costs, low volume of traffic, or when the roads are considered to be of no value to local citizens. In most States, the county only has the option of continuing the road on its system, or vacating it. In other States, these roads may revert to a "limited public road" status which leaves the road without any party having control or jurisdiction. Everyone has the right to use, but no one has the responsibility for maintenance.

There is need for agreement between local, State, and Federal road officials on the extent of each entities' responsibilities. The need for county and State participation is high where these roads also serve private lands within National Forests. National Forest Supervisors have long worked with

county officials to resolve problems on a county-by-county basis. Increased awareness by State and local governments of their role and obligations is called for. The counties should be encouraged to provide a portion of the funds they receive annually from National Forest receipts to improve public access to National Forests.

There is often a need for more direct contact between organizations interested in improved access, particularly sportsmen, and the Forest Service at the local level. Discussion of specific access situations is a valuable means of resolving problems. A joint effort can lead to positive results. In a larger context, National Forest users need to take a greater interest in the local public road or who have restricted public access.

In a related manner, local sportsmen clubs and organized users of the National Forests need to help get the message across to users of Federal lands that private property owners need to be protected from the thoughtless acts that cause inconvenience and often monetary damages to their property. We need help in maintaining a good neighbor relationship with the landowners in and around the National Forests.

The solutions I have offered today are reasonable and within the scope of statutory authorities and administrative procedures available to the Forest Service. We believe that their consideration and implementation, aided by this Subcommittee's continuing interest, will provide the means to resolve problems of access to public and private lands.

That concludes my testimony. I would be happy to respond to the Subcommittee's question.

Senator WALLOP. Stan, thank you.

Howard.

STATEMENT OF HOWARD M. SCHRINAR, COMMISSIONER, PUBLIC LANDS AND FARM LOANS, WYOMING STATE LAND OFFICE, CHEYENNE, WY

Mr. SCHRINAR. Thank you, Senator Wallop. It's certainly a pleasure and I appreciate the opportunity to appear before your committee at this hearing concerning access to the public lands.

The conflicts inherent in recreational versus other uses of public lands has received increasing attention over the past decade, and I think certainly most of us must admit it will require increasing attention in the future. Open dialog and discussion, I feel, is essential to the minimization of land use conflicts and a maximization of the many benefits to be offered by the public lands.

As an owner of 3.6 million surface acres and 4.2 million mineral acres in the State of Wyoming, our office is vary aware of the many problems associated with access to the public lands. Many of the complaints we receive in the State Land Office concerning access to State lands are a direct result of the misunderstanding of the purpose and nature of State owned land. Unlike BLM and Forest Service lands, State lands were never intended for the general use and enjoyment of the public.

Let me pause there for a moment for that thought to sink in. Most people in Wyoming believe that State lands were given to the State of Wyoming for the general use and enjoyment of the public. That is simply not true.

Wyoming, like all other Western States, was granted certain lands upon its admission to the Union. Under the Federal Enabling Act which created the State of Wyoming, we received approximately 4.2 million acres of land for the support of various public institutions, including the common schools, university, agricultural college, the penitentiary and other State institutions. Under articles 7 and 18 of the Wyoming constitution, the board of land commissioners, composed of the Governor, secretary of State, the State treasurer, State auditor, and superintendent of public construction, were appointed trustees of State lands with powers of direction, control, leasing, and disposal of those lands.

The lands granted to the State of Wyoming for its public institutions were required, both under the Federal Enabling Act and the State constitution, to be held in trust for the exclusive benefits of the common schools and other State institutions. As noted by the U.S. Supreme Court in reviewing Arizona's Enabling Act and constitution, which is very similar to Wyoming's, the U.S. Supreme Court said:

> The Enabling Act unequivocally demands both that the trust receive the full value of any lands transferred from it and that any funds received be employed only for the purpose for which the land was given. * * * All of these restrictions in combination indicate Congress' concern both that the grants provide the most substantial support possible to the beneficiaries and that only those beneficiaries profit from the trust.

Other courts have indicated the States have an irrevocable duty, as trustee, to manage the trust estate for the exclusive benefit of the beneficiaries, primarily the public schools, and return full value from the use and disposition of the trust property.

If you go through case law you will find nearly every State that was granted lands upon their admission here in the West has similar provisions and requirements.

While the responsibility of the State to maximize income from State lands and administer State lands for the exclusive benefit of the public schools and other institutions stirs the ire of some Wyoming citizens, I think a review of the benefits of State land ownership shows very clearly all Wyoming citizens are substantially benefiting from State lands. Average income from State-owned lands in Wyoming over the last few years has been approximately $75 million per year.

The permanent school trust fund and other trust funds now exceed $540 million a year, I mean $540 million.

Last year, $45 million was provided to the public schools in Wyoming because of State land ownership.

Now, if you assume there are 500,000 people in the State of Wyoming and the average household size is approximately 2.5 people, State lands provided approximately $225 to the public schools on behalf of every family in Wyoming. Now, that is money which would have to be made up through taxes or some other source of revenue if we are to maintain the excellence in our public schools which exists today in Wyoming. So everybody in Wyoming benefits monetarily, at least, from State lands.

While State lands must be managed for the exclusive benefit of the public schools and other institutions, there are nonconsumptive uses of State lands which are consistent with that State's trust responsibility. Of primary importance in this area are hunting and fishing uses. That the State of Wyoming has specifically reserved hunting and fishing rights under all of the grazing leases it issues on State trust lands. The policy of the board of land commissioners in reserving hunting and fishing rights is that proper wildlife management is a needed tool which benefits State trust lands and does not involve a consumptive use of such lands.

While citizens do have the right to hunt and fish on State lands, if public access is available, there are several restrictions. First, you must have access to those public lands. We have no authority to grant access across private lands into our State lands. Second, you must understand that we have allowed our lessee a great deal of discretion in how to manage those lands.

Being an absentee landowner as such, and if you want to look at one of the maps on the walls that show how State lands are scattered throughout the State, without a staff of a couple hundred people it's virtually impossible to manage those State lands, so we do rely very heavily on the surface lessee.

While our primary responsibility in the land office is to manage State trust lands for the exclusive benefit of State institutions, such responsibility does not foreclose nonconsumptive uses such as hunting and fishing, involving proper management practices. It is to everyone's benefit, it seems to me, to resolve access problems. The State land office and board of land commissioners will aid such resolution efforts to the extent they are consistent with our trustee responsibilities.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Schrinar follows:]

TESTIMONY BEFORE THE
SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER, AND RESOURCE CONSERVATION
OF THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

CONCERNING
PUBLIC ACCESS

Presented by

Howard M. Schrinar
Commissioner of Public Lands and Farm Loans

It is certainly a pleasure to be invited to participate in Senator Wallop's oversight hearings on access to publicly-owned lands. The conflicts inherent in recreational vs. other uses of public lands has received increasing attention in the past decade and can be expected to require even more attention in the future. Open dialogue and discussion is essential to the minimization of land use conflicts and the maximization of the many benefits of the public lands.

As an owner of 3.6 million surface acres and 4.2 million mineral acres, the State of Wyoming is well aware of access problems on public lands. Many of the complaints we receive concerning access to state lands are a direct result of misunderstanding of the nature and purpose of such lands. Unlike BLM and Forest Service lands, state lands were never intended for the general use and enjoyment of the public.

Wyoming, like all other western states, was granted certain lands upon its admission to the Union. Under the federal enabling act which granted Wyoming statehood, we received approximately 4.2 million acres of land for the support of various public institutions including the common schools, university, agricultural college, penitentiary, and others. Under Articles 7 and 18 of Wyoming's Constitution, the Board of Land Commissioners, composed of the Governor, Secretary of State, Treasurer, Auditor, and Superintendent of Public Instruction, were appointed trustees of state lands with powers of direction, control, leasing, and disposal of such lands.

The lands granted to Wyoming for its public institutions were required to be held in trust for the exclusive benefit of the common schools and other state institutions. As noted by the U. S. Supreme Court in reviewing Arizona state lands:

> "The Enabling Act unequivocally demands both that the trust receive the **full value** of any lands transferred from it and that any funds received be employed only for the purpose for which the land was given . . . All of these restrictions in combination indicate Congress' concern both that the grants provide the **most substantial support possible** to the beneficiaries and that only those beneficiaries profit from the trust." (Emphasis added) **Lassen v. Arizona**, 385 U. S. 458 (1967)

The Oklahoma Supreme Court also emphasized the sanctity of the school lands trust in **Oklahoma Education Association, Inc., v. Nigh**, 642 P.2d 230, 235-236 (Okl. 1982):

> "No disposition of such lands or funds can be made that conflict either with the terms and purposes of the grant in the Enabling Act or the provisions of the Constitution relating to such land and funds. The State has an **irrevocable duty**, as Trustee, to manage the trust estate for the exclusive benefit of the beneficiaries, and **return full value from the use and disposition of the trust property.** The express designation of the school lands and funds as a 'sacred trust' has the effect of irrevocably incorporating into the Enabling Act, Oklahoma Constitution, and conditions of the grant, all of the rules of law and duties governing the administration of trusts.
>
> No Act of the Legislature can validly alter, modify, or diminish the State's duty as Trustee of the school land trust to administer it in a manner most beneficial to the trust estate and in a manner which obtains the maximum benefit in return from the use of trust property or loan of trust funds." (Emphasis added)

Other language employed by other courts and authorities is as follows:

1. **Lassen v. Arizona** 385 U.S. 458 (1967) mandates **"full fair compensation for trust lands."** and **"most substantial support possible."**

2. **United States v. 78.61 Acres**, 265 F. Supp. 564, 567 (D.C. Neb. 1964) "Any diminution in the **value** of the trust is prohibited."

3. **State v. Snyder**, 212 P. 758, 766 (Wyo. 1923) "matter of primary importance here is the realization of the **best price possible**."

4. **State ex. rel. Ebke v. Board of Education Lands and Funds**, 47 N.W. 2d 520, 523 (Neb. 1951) "trustee is required to dispose of trust property upon the **most advantageous terms** which it is possible for him to secure" and "trustee is required to accept the highest bid in the absence of cogent reasons for not so doing."

5. Gladden Farms Inc., v. State, 633 P.2d 325, 329 (Ariz. 1981) "assure that the trust lands generated the appropriate if not the maximum revenue for the support of the common schools."

6. 73A C.J.S. Public Lands, Section 84 (1983), trustee is without power "to alienate the school lands without receiving their full value."

7. Oklahoma Education Association, Inc., v. Nigh, 642 P.2d 230, 235-236, (Okl 1982). State has irrevocable duty to "return full value from the use and disposition of the trust property" and administer school land trust "in a manner which obtains the maximum benefit in return from the use of trust property or loan of trust funds."

8. Alamo Land and Cattle Co., Inc. v. Arizona, 424 U.S. 295 (1976) "full value of the particular interest" and "rental of substantially less than the land's fair rental value, is null and void."

9. State v. University of Alaska, 624 P.2d 807, 813 (Alaska 1981) "implied intent of the grant was to maximize the economic return from the land."

10. County of Skamania v. State, 685 P.2d 576, 583 (Wash. 1984) "constitutional requirement that the state seek full market value for trust assets."

11. Land and Water Law Review, Volume XX, No. 1, Wyoming School Trust Lands Trapped Inside Grand Teton National Park, page 220 (1985) "failure of Wyoming to receive market rate returns on these school lands constitutes a continuing breach of school trust obligation."

While the responsibility of the state to maximize income from state lands and administer state lands for the exclusive benefit of the public schools and institutions stirs the ire of some Wyoming citizens, a review of the benefits of state land ownership shows that all Wyoming citizens are benefiting substantially from state lands. Average income from state-owned lands in Wyoming over the past several years has been approximately 75 million dollars per year. The permanent state trust lands funds now exceed 540 million dollars. Last year alone, state lands provided 45 million dollars to Wyoming's public schools.

With a population of 500,000 people and an average household size of 2.5 persons, state lands have contributed $225 per household toward paying the costs of our public schools. Without the income generated by public lands, every household in Wyoming would have to pay an additional $240 in taxes each year in order to maintain the current level of excellence of Wyoming's schools. Therefore, I would suggest that all Wyoming citizens have a very real and direct financial interest in the proper administration of state trust lands.

While state lands must be managed for the exclusive benefit of the public schools and other institutions, there are nonconsumptive uses of state lands which are consistent with the state's trust responsibility. Of primary importance in this area are hunting and fishing uses. The State of Wyoming has specifically reserved hunting and fishing rights under all of the grazing lessees it issues on state trust lands. The policy of the Board of Land Commissioners in reserving hunting and fishing rights is that proper wildlife management is a needed tool which benefits state trust lands and does not involve a consumptive use of such lands.

While citizens do have the right to hunt and fish on state trust lands, such right is not unlimited. First, public access to the state trust lands must be available. There is no legal right for people to cross privately-owned lands in order to hunt and fish on state-owned lands. Second, grazing lessees have been allowed discretion in regulating certain hunting and fishing activities on state lands which damage the state's property. Such activities include limiting travel to improved roads and prohibiting ATV activities and fires when conditions are dry. Given the very limited staff of the State Land Office and the scattered nature of state lands, we must rely on our surface lessees to properly care for and protect our state lands.

In looking to the future, our office is more than willing to work with other land owners to provide access and accommodate the desires of all groups interested in public lands. We are currently working with BLM, the Forest Service, and other state and federal agencies to develop programs and procedures for reducing conflicts over access to public lands. Such efforts, combined with increased land exchanges, can not only reduce conflicts over land uses and access, but can also promote better and more efficient management of state, federal and private lands.

While our primary responsibility in the Land Office is to manage state trust lands for the exclusive benefit of the public schools and other institutions, such responsibility does not foreclose nonconsumptive uses involving proper management practices. It is to everyone's benefit to resolve access problems, and the State Land Office will aid such resolution efforts to the extent they are consistent with our trust responsibilities.

Senator **Wallop**. Howard, thank you, thank you very much. Larry Kruckenberg.

STATEMENT OF LARRY KRUCKENBERG, CHIEF OF COMMUNICATIONS, WYOMING GAME AND FISH DEPARTMENT, CHEYENNE, WY

Mr. **Kruckenberg**. Thank you very much. My name is Larry Kruckenberg, chief of communications for the Wyoming Fish and Game, here representing the department, commission, and the sportsmen of the State.

The Wyoming Game and Fish Department is charged with the management of wildlife by State statute, a job which we fill with a great deal of pride and conviction. Access to wildlife habitat is an integral part of those management responsibilities. As such, I am delighted with the opportunity to participate in this panel discussion regarding such an important issue. However, before presenting specific comments I would like to discuss a related access issue which apparently is of interest to you, Senator Wallop, and that is the privatization of wildlife.

It is my understanding, Senator, you feel the California system, whereby wildlife on individual ranch units are managed by landowners exclusively, should be investigated as an alternative approach for wildlife management in Wyoming.

I want to say at the very outset that the game and fish department is unalterably opposed to the privatization of big and trophy game animals in this State. I hope I can convince you with my brief statement that a system of privatization is inappropriate for such a valuable State resource.

The department manages approximately 200 big game herd units throughout the State, including mountain goat, bighorn sheep, moose, elk, mule deer, white-tailed deer, and antelope. In addition, we manage hundreds of other species of trophy game, upland game, small game, and nongame. The big game species appear to be of most interest to those who are interested in the privatization of wildlife.

Big game herds in much of Wyoming migrate seasonally. That is, they spend part of the year on a summer range and part of the years on a winter range, and must move freely between these two ranges to survive Wyoming's extremely harsh environment. Hunting is a tool the department uses to maintain populations at objective levels.

To control populations, hunting decisions must be made considering the reproductive and mortality rates of the entire population. Nowhere in the State is a herd unit confined to one ranch or private land unit. In almost all cases, the herd units are comprised of a variety of landownerships, including State, Federal, and private land. Those big game species do not identify these boundaries and move freely unless excluded by gameproof fences between various landowners. To try to isolate these groups of animals would destroy the integrity of our wild, free-ranging herds and hamper the department's ability to manage them for the public good.

However, going beyond the biological problems associated with managing on a herd—on a ranch unit basis, I would like to address our philosophical opposition to this sort of management. Perhaps the best way to express that is to quote a noted scientist from the University of Calgary, Valerius Geist. As a result of an indepth international study, Dr. Geist has the following to say about game ranching, he says:

"Game ranching is a highly regressive step to feudalistic practices in which wildlife was in the control of and for the benefit of a small elite, and not accessible to the population at large. It is contrary to the highly successful conservation and management practices evolved over the last century in North America. By the transferring the wildlife from the public to the private domain, wildlife is robbed of its major protection."

Paraphrasing, "* * * Game ranching is an unwarranted assault to the best wildlife management system devised, the North America one, which is the envy of the civilized world."

I would like to add to Dr. Geist's comments in that the wildlife resource in Wyoming is a tremendous asset, an asset that is owned by the public and which benefits the public at large. Any system which removes the public ownership of wildlife will result in tremendous loss of support for that wildlife resource an a precipitous loss of income for the State. And it would also meet with considerable opposition from most Wyoming residents. I hope this panel agrees with our assessment.

As additional supporting evidence of our position on privatization of wildlife, I'd like to have exhibit 1, which is attached to my comments, entered in the official record of this subcommittee hearing.

Now, with regard to the issue of access and first point that you asked the department to address; the game and fish department's policy with regard to access is embodied in our overall management goal; that is, manage all Wyoming wildlife in cooperation with private landowners and public land management agencies, manage their habitats in such a manner that all population of native wildlife species maintain a density and distribution consistent with the welfare of the resource which will provide optimum sustained recreational scientific, educational, aesthetic, and economic benefits to the public.

To assist in that effort, Wyoming State law has several statutes which relate to access. WS 23-2-101 and 23-3-305 require that sportsmen obtain permission before going on private lands. WS 23-2-401 provides landowners the ability to guide sportsmen on their land without the need of a professional guides's license. WS 23-2-404 goes further and allows the landowner to provide outfitting services on his own land and charge for those services, without requiring a license for outfitting. WS 34-19-103 severely limits the liability landowners have for sportsmen when they go on private land to hunt. Specifically, an owner of land who either directly or indirectly invites or permits a person to use their land for recreational purposes, is not liable when that person comes to the property without charge. This liability limitation does not hold true if the landowner charges the person or persons who go on the land for recreational use.

In addition, Wyoming State statute provides a landowner coupon for each deer and antelope license which can be redeemed by the landowner for each animal harvested on private land at the end of the big game hunting season.

Currently the department pays out approximately $750,000 annually to participating landowners in the form of coupon redemptions. This is in excess of the trespass fees landowners may receive.

And finally, we attempt to develop administrative access to all lands in the State to allow us to accomplish those tasks necessary for wildlife management, including data collection, law enforcement, damage prevention, and damage control.

[The prepared statement of Mr. Kruckenberg follows:]

COMMENTS BY THE WYOMING
GAME AND FISH DEPARTMENT
BEFORE THE SENATE SUBCOMMITTEE ON
PUBLIC LANDS, RESERVED WATER AND
RESOURCE CONSERVATION

-- Saturday, March 15, 1986
Rock Springs, Wyoming

PANEL ONE:

Senator Wallop, subcommittee members, other distinguished panel members and audience:

My name is Larry Kruckenberg, Chief of Communications for the Wyoming Game Department here representing the Department, Commission and the sportsmen of the state. The Wyoming Game and Fish Department is charged with the management of wildlife by state statute, a job which we fill with a great deal of pride and conviction. Access to wildlife habitat is an integral part of those management responsibilities. As such, I am delighted with the opportunity to participate in this panel discussion regarding such an important issue. However, before presenting any testimony regarding access, I would like to address an issue which apparently is of interest to you, Senator Wallop--privatization of wildlife. It is my understanding you feel the California system, whereby wildlife on individual ranch units are managed by landowners exclusively, should be investigated as an alternative approach for wildlife management in Wyoming. I want to say at the very outset, that the Game and Fish Department is unalterably opposed to the privatization of big and trophy game animals in this state. I hope I can convince you with my brief statement that a system of privatization is inappropriate for such a valuable state resource.

The Game and Fish Department manages approximately 219 big game herds throughout the state, including mountain goat, bighorn sheep, moose, elk, mule deer, white-tailed deer and antelope. In addition, we manage hundreds of other species of trophy game, upland game, small game and nongame. The big game species appear to be the ones of most interest to those interested in privatization of wildlife. Big game herds in much of Wyoming migrate seasonally. That is, they spend part of the year on a summer range and part of the year on a winter range, and must move freely between these two ranges to survive Wyoming's extremely harsh environment. Hunting is a tool the Game and Fish Department uses to maintain populations at objective levels. To control populations, hunting decisions must be made considering the reproductive and mortality rates of the entire population. No where in the state is a herd unit confined to one ranch or private land unit. In almost all cases, the herd units are comprised of a variety of land ownerships including state, federal and private land. Those big game species do not identify these boundaries, and move freely, unless excluded by game proof fencing, between various landowners. To try to isolate these groups of animals would destroy the integrity of our wild, free-ranging herds and hamper the Game and Fish Department's ability to manage them for the public good.

However, going beyond the biological problems associated with managing on a ranch unit basis, I would like to address my Departments' philosophical opposition to this sort of management. Perhaps the best way to express our feelings regarding this proposal, is to quote a noted scientist from the University of Calgary, Valerius Geist. As a result of an indepth international study, Dr. Geist has the following to say about game ranching.

> "Game ranching is a highly regressive step to feudalistic practices in which wildlife was in the control of and for the benefit of a small elite, and not accessible to the population at large. It is contrary to the highly successful conservation and management practices evolved over the last century in North America. By the transferring of wildlife from the public to the private domain, wildlife is robbed of its major protection. While placing it into the market place also opens the door to organized criminal activity. Game ranching poses the distinct possibility of excluding the public from large tracts of lands, taking from them the real, healthful good contained in outdoor recreation and wild game. Game ranching is an unwarranted assault on the best wildlife management system yet devised, the North American one, which is the envy of the civilized world".

I would like to add to Valerius Geist's comments in that the wildlife resource in Wyoming is a tremendous asset, an asset which is owned by the public and which benefits the public at large. Any system which removes the public ownership of wildlife will result in tremendous loss of support for that wildlife resource and a precipitous loss of income for the state. It would also meet with considerable opposition from most Wyoming residents. I hope this panel agrees with our assessment. As additional supporting evidence of our position on privatization of wildlife, I'd like to have Exhibit 1. entered into the official record of the subcommittee hearing.

Now with regard to the issue of access and the two points you asked the Department to address;

The assessment, identification and definition of public and private land access policies, laws and practices.

The Game and Fish Department's policy with regard to access is embodied in our overall management goal, that is " manage all Wyoming wildlife, and in cooperation with private landowners and public land management agencies, manage their habitats in such a manner that all populations of native wildlife species maintain a density and distribution consistent with the welfare of the resource which will provide optimum sustained recreational, scientific, educational, aesthetic and economic benefits to the public". To assist in that effort, Wyoming state law has several statutes which relate to access. WS 23-2-101 and 23-3-305 require that sportsmen obtain permission before going on private lands. WS 23-2-401 provides landowners the ability to guide sportsmen on their lands without the need of a professional guides license. WS 23-2-404 goes further and allows the landowner to provide outfitting services on their own land and charge for those services, without requiring a license for outfitting. WS 34-19-103 severely limits the liability landowners have for sportsmen when they go on private land to hunt. Specifically, an owner of land who either directly or indirectly invites or permits a person to use their property for recreational purposes, is not liable when that person comes on the property without charge. This liability limitation does not hold true, if the landowner charges the person or persons who go on the land for recreational use.

In addition, Wyoming state statute provides a landowner coupon for each antelope and deer license which can be redeemed by the landowner for each harvested animal taken from private land at the end of each big game hunting season. Currently the Department pays out approximately $750,000.00 annually to participating landowners in the form of coupon redemptions. This is in excess of trespass fees landowners may receive. The Department commonly works with federal land management agencies and landowners in an attempt to provide public access to both private and public lands for the purpose of wildlife associated recreational activities.

And finally, we attempt to develop administrative access to all lands in the state to allow us to accomplish those tasks necessary for wildlife management, including data collection, law enforcement, damage prevention and damage control.

EXHIBIT 1. WYOMING GAME AND FISH DEPARTMENT

REPRODUCED FROM

Wyoming Wildlife Magazine, March, 1986 issue

published by the WYOMING GAME & FISH COMMISSION

Erwin and Peggy Bauer photo

The Texas-style lease: Can it work in Wyoming?

article by Doug Crowe

photographs by Erwin and Peggy Bauer and LuRay Parker

There are a great many big game populations, or herds, in Wyoming. It is common to hear people refer to the Jackson elk herd, the Whiskey Mountain bighorn sheep herd, or the Black Hills whitetail herd. They are, of course, referring to specific populations and the areas occupied by those populations. There are 204 of these big game (deer, elk, antelope, moose, sheep, goat) herds in the state. The ground they cover in an average year ranges from 5,000,000 acres for the Sublette antelope herd to 7,000 acres for the Barnum bighorn sheep herd. The size of the populations themselves ranges from an estimated 38,000 animals in the Medicine Bow antelope herd to less than twenty-five bighorn sheep in the Sweetwater herd.

In the face of all this diversity, there is one constant no matter the species or its abundance. That constant is the presence of food, water and cover to sustain the population. Further, these staples must be available within a framework of seasonal ranges. Wyoming's harsh climate dictates that animals must move from one range to another as conditions change. Some of these migrations are truly spectacular. Elk from Yellowstone and the Thorofare Plateau move as far as Jackson Hole on their fall migration, a jaunt of sixty or more airline miles. Ante-

Erwin and Peggy Bauer photo

lope in the Sublette herd vacate the lush pastures on the upper Green River and trek southward for more than a hundred miles to winter on the desert around Rock Springs. Mule deer in the Baggs herd leave the Sierra Madre mountains, journeying westward to the juniper slopes and sagebrush draws along Muddy Creek, a seventy-mile trip. Other migrational odysseys are less spectacular, being perhaps only a few miles and several thousand feet in elevation. Whatever the case, the important factor is the annual movement to and from these seasonal ranges as the herds seek fresh forage and escape from winter's extremes. Without this capability, there would be no free-ranging wild populations in Wyoming. The seasonal ranges must be present and access to and from them provided. These seasonal ranges are like the pieces of a puzzle, fitting together to make the whole, and the whole is greater than the sum of its parts. No one range component maintains the population by itself—together, they combine to provide a life support system.

All wild animals must have the basics of food, water and cover. However, in more temperate regions of this country, the herds do not require these basics within a framework of seasonal ranges because they need not move to escape extremes of weather. White-tailed deer in south Texas, for example, may live and die within a few hundred yards of their birthplace. They do not have to move great distances to satisfy their year-round food, water and cover needs. This is an important point to consider in light of the recent influx of "Texas-style" hunting philosophy into Wyoming. This system, quite common in the state of Texas from whence comes the name, is a situation wherein the right of access to wildlife is sold. Few indeed are those who hunt deer in Texas without paying a lease or access fee. This seems to be widely accepted there and results in an economic return to landowners. This

The differences in the big game hunting experience in Texas and Wyoming are almost overwhelming. The deer are different—Texas' sedentary whitetails generally stay where they're born; Wyoming's muleys commonly move thirty to sixty miles between winter and summer range. Access is different—Texas' huge population has practically no open public lands. Even hunting techniques differ—the Texas hunter often waits for a buck to come to him; the Wyoming hunter more frequently goes after his trophy.

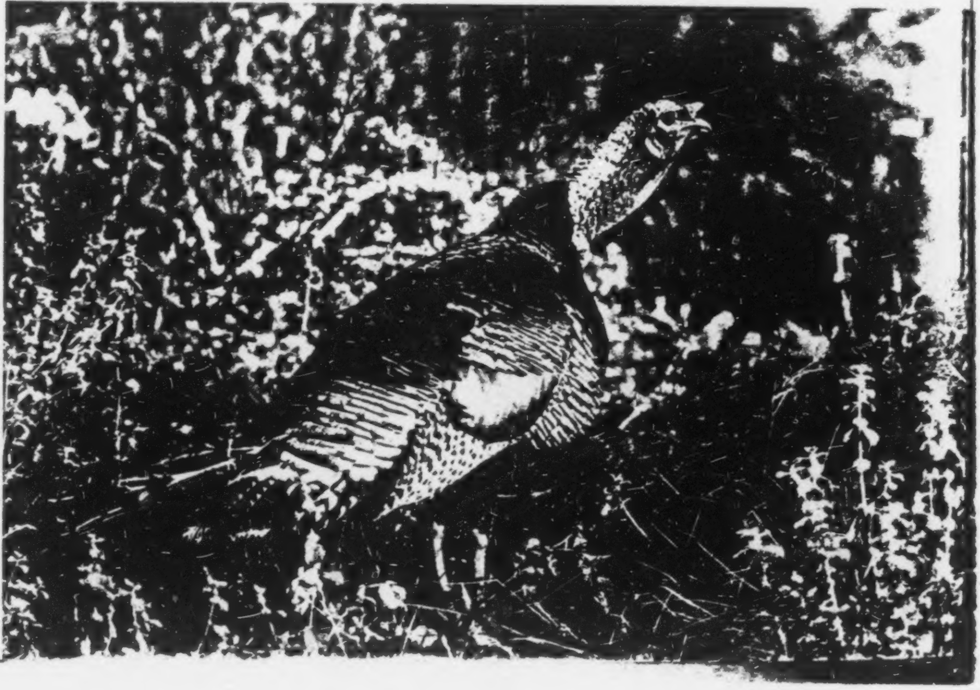
being the case, a question increasingly asked is, "Why not transplant the philosophy here?"

There are three major reasons. The first has already been discussed—our herds move! And the second is that Texas is nearly all private land, while in Wyoming, more than fifty percent of the land is in the public domain. The third reason is one of philosophical difference—animal husbandry versus wildlife conservation. These differences loom large in any discussion of implementing "Texas-style" hunting in Wyoming.

Because our big game herds move with the seasons, there may be many animals present in an area during the fall but none in the same area during winter. What this means is that one landowner may restrict access for hunting with a consequent increase in herd numbers, yet that increasing herd spends its winters, and perhaps its summers, in other areas where the landowners do not reap the benefits of the fall influx of hunters but must support the herd.

This is one of the reasons that big game herds in Wyoming are managed for a specific objective number. This number is negotiated amongst the many persons interested in each herd. It is difficult enough to establish an objective number acceptable to all involved interests. It is even more difficult to achieve and maintain the objective level when access is denied by some private interests, causing other landowners to bear the load of supporting wild herds at levels above the agreed-upon objective, even though they allowed public hunting.

An even greater problem is that of land ownership patterns. There are no wild herds in this state which exist entirely on public land. For example, a road closed across private lands often prevents access to Bureau of Land Management, Forest Service, or state lands. The landowner may be within his legal rights to close the road, but one has to



The Texas lease often offers more than just deer hunting. The more diverse southern fauna offers the hunter a chance at turkeys, bobwhite quail, javelina, doves, and a variety of predators as well.

Erwin and Peggy Bauer photo

consider the morality of this act as well as the negative reactions generated in the general public.

A final consideration is that of attitude. There are some areas of this country where very intensive management schemes are practiced. In some cases, it extends to a system of animal husbandry wherein big game is raised in an enclosed pasture, genetically "inferior" animals are culled, dietary supplements that promote antler growth are provided, animals are trained to come to a feeder, and the right to kill them is sold.

The general philosophy in Wyoming is that wildlife is not managed solely for the gun but rather for its intrinsic value. The overriding principle is to maintain healthy, free-ranging wild populations that will produce a harvestable surplus. Although the "Wyoming system" of wildlife management may not be the most efficient system for animal production, it is a good system for wildlife conservation and the one that best suits most folks in the Rocky Mountain West.

The point of all this is that Wyoming is not Texas! Here we do not deal with sedentary big game herds and areas of hundred-percent private land. To quote John Donne, "No man is an island," and throughout most of this state, one cannot expect to build a fence around himself, lock the gates, charge for trespass, and live happily ever after. When this is attempted, too many people and jurisdictions are involved. The interests and rights of others are impaired with resulting hard feelings and negative reactions.

Hunting in many parts of this country is increasingly becoming a pursuit of the affluent middle and upper classes. So far in Wyoming, to hunt or not to hunt is a matter of choice and not constrained by economic status or special privilege. This is good, for as long as the public is able to experience wildlife, the feelings of public pride, ownership and stewardship will remain intact. This results in the political basis for: public incentives to private landowners for benefits to wildlife, public policy which considers wildlife as a desirable social value, and laws protecting wildlife and habitat.

This notion of wildlife as a resource to be enjoyed by the general public is an American idea. It is rooted in history and steeped in tradition. There is danger in allowing wildlife to become a plaything of the rich rather than a healthy and character-shaping influence on the public as a whole.

This is not to say that the private landowner should not realize an economic benefit from the wild resources to which he plays host. Private enterprises and economic entrepreneurs are as American as the public ownership of wildlife. And Wyoming lends itself to opportunities for private interests and wildlife resources. Because there is so much public land, the private landowner can provide services to wildlife enthusiasts that base on his private land but extend to a much broader area when the public domain is included. It may not be feasible (or profitable) to adopt a Texas-style, restricted access approach, but a program which offers a broad spectrum of services to hunters, fishermen, and other wildlife enthusiasts can result in handsome economic returns and extend well beyond the borders of private lands.

Erwin and Peggy Bauer photos

The other side of the coin is a realization by sportsmen that the landowner has a right to expect economic return from his lands. In days past when there were fewer of us and the agricultural community was healthier, private lands were generally available to all and sundry. But times have changed, and it is as logical for us to expect to pay for the privilege of recreating on private land as it is to expect free access to public land.

All of us, sportsmen and landowners alike, would do well to heed Barry Commoner's Four Laws of Ecology: 1) everything is connected to everything else; 2) everything must go somewhere; 3) Nature knows best; and 4) there is no free lunch. □ □ □

Author Doug Crowe recently left his position as planning coordinator to take up duties as assistant director of the Game and Fish Department. Photographers Erwin and Peggy Bauer have spent years in Texas producing superb images of the state's wildlife and wild lands.

Senator WALLOP. Larry, thank you.

Cal Ragsdale.

STATEMENT OF CALVIN RAGSDALE, WESTERN WYOMING LIVESTOCK USERS ASSOCIATION, ROCK SPRINGS, WY

Mr. RAGSDALE. I'll try to address the appointed topic a little more than my predecessor.

My name is Calvin Ragsdale, I'm an attorney in Green River, WY, and I'm appearing here today on behalf of Western Wyoming Livestock Users Association, which is a corporation created to represent livestock users and their relationship with the Bureau of Land Management in southwest Wyoming within the Rock Springs district. It can sometimes be a full-time occupation.

Generally speaking, there are sufficient policies, laws and practices presently on the books in existence at the Federal and State level to accommodate a solution of most any problem that could ever occur with respect to access. The question is whether they will be used. The question is how they will be used. The questions are whether the perceived problems are simply figurements of individual's imagination.

Basically, I think the law, with respect to access, can be stated very simply, the United States was the source of all title. They granted to individual and private landowners the fee simple interest in that property. They retained other properties. And in the course of giving fee simple title to private landowners they impliedly gave an easement to those lands across their own lands in the event there was some sort of lockup of the private lands. They did not, however, retain for themselves the ability or implied easement to reach their own lands across the private lands which they conveyed to the private landowner.

It took the Federal Government several years to understand that. And the Supreme Court, in the last 8 or 9 years in the case of *Leo Sheep Co.* v. *United States,* finally persuaded them of the truth of that particular position, which had probably been in existence since 1789.

But that doesn't stop anything, because the Federal Government always has the ultimate power to condemn or it has the power to go and negotiate with those individuals, just like any other individual landowner. So does the State government.

The difficulties come, I think primarily, in the practice and the policy that, generally speaking, governments don't feel like they're like the rest of us. If I want to obtain the right to cross the U.S. lands I must go through a complicated procedure of an application, even if I have a right to cross their lands, if I want to, in some fashion, formalize that relationship. And if I want to formalize that relationship, I can only do it by paying them the permit application fees, going through the process, following all of their very thick set of regulations, and finally paying a nominal annual rental to the United States of America. Even for that which I have by implication.

On the other hand, governments, at least until recent years, had the impression that if they wanted to go somewhere, all they had to do was send out their road grader. And they did in the *Leo Sheep Co.* case, and they were slapped for it.

The problem comes in the practice. Government and their publics, don't give the same courtesy to private landowners in the rural situation that they demand from those particular landowners in exercising their own proprietary rights.

So in terms of assessing, identifying, and defining public and private land policies, public laws and practices, they're there. Not a day goes by that rights are not enforced in favor of the public, where they are present; not a day goes by that those rights are not enforced on private landowners when those rights are present.

One of the classic cases is the rancher in the northern part of the State who thought that he owned his surface, and found out that he couldn't control his surface because of the Federal Government's oil and gas lessee, and it ultimately cost him $70,000 to discover that. So those rights are there, they can be enforced, they're present.

I think that any suggestion that there are insolvable problems is erroneous. Problems, yes, but they're mostly problems of practice and courtesy in observing the rights of those owners, both Federal and private.

Senator WALLOP. Cal, thank you. And thank all the panel participants.

Let me begin by asking either Hillary Oden or Dan Tixier, what are the responsibilities of the leaseholder to maintain any of the territory from which that lease exists? I'm talking about such things as the surface condition of the grass, of the fences, the water and other kind of things. Does he have any at all or is that all the responsibility of the managing agency?

Mr. ODEN. You're talking about the grazing lessee?

Senator WALLOP. Yes.

Mr. ODEN. It would be the responsibility of the grazing lessee to maintain fences, improvements, and to properly use the grass on there according to the alloted animal use on it.

Senator WALLOP. Is that the same?

Mr. TIXIER. Yes, except a point of order in that as far as national forest grazing permits are concerned, there's no lease at all. It's a permit for that particular activity and the land is open. Of course, multiple use for other——

Senator WALLOP. They are in both instances, but there is a responsibility that the permittee has that is greater than the general public.

Mr. TIXIER. That's correct.

Senator WALLOP. How, then, does the permittee protect himself in that responsibility when others who have got it come in who have free range in use? I mean, supposing they destroy fences, supposing they take their vehicles off and destroy water access or hillsides or a variety of things.

Mr. TIXIER. That's—it's a law enforcement problem for the Federal agency. It's a cooperative problem, as far as the grazing permittees are concerned, to work with us to try to identify the offenders. And it's also, I guess you'd say, the cost of doing business on public land. That's supposed to be recognized in the grazing fee paid. That's another——

Senator **Wallop**. I can tell you, that's one of the things that was not recognized in the studies, which both your agencies put together. But let me ask you this; when you say access, how are you defining that? Is that the unfettered, uncharged access, or is there some access accounted for access? I mean, you see, in each of your statements, you know, you referred to the word "access," and yet we don't, sort of, come to grips with what that means. I mean, if some people have access, is that access? Or is it not access until everybody has unfettered access?

Mr. **Oden**. We got two types of formal access, or easements. One, as I mentioned, is the public access where the Bureau gets the easement but then has the right to allow any of the public to use that easement. Other types are just administrative. You might get them for the purpose of just going across private land to get timber or something of that nature. Also, as far as access in general on the public lands, we allow what is called casual use access; walking, riding, or vehicles on established trails, something that won't significantly disturb the surface, without any formal permit.

Senator **Wallop**. I think one of the problems that we have in here is we're not really talking about anything that has been defined. The State has a pretty clear—and Howard, I compliment you on your statement. We have a pretty clear dermination of them. I'm just reading a statement. I don't mean to be critical because part of what we're gathering here for is to, sort of, determine what the problem is.

So when we, when we have a statement that there's a certain number of blocks of land to which there is no access, is that by anyone but the one person, or is some access in there?

I was reading in here, for instance, just on your first page, it says, through the—you say:

> Access needs are identified in the planning process which has an opportunity for public participation in several of its stages. Through the Bureau planning system, a transportation plan is established which identified access to public lands. Primarily, the BLM addresses access to large blocks of public lands. But refusal to allow access to any size parcel could become an issue.

My question is, what is access? You know, are we talking about free, unfettered, unlimited, or with some limitation, or access for some purpose, access for every purpose? What is, you know——

Mr. **Tixier**. Maybe I could address that. As far as the national forests are concerned, it's very similar, of course, to the public land administered by the BLM, but I think what we're talking about is the fact that this is, this is publicly owned land, owned by the United States and the general public for purposes of recreation, hunting, fishing. Under State law, it has a right to get to that land, and so——

Senator **Wallop**. But I think Mr. Ragsdale would contest that under law. Am I correct or incorrect?

Mr. **Ragsdale**. Right. I think we have two different kind of access questions that come up, and one of them is if from getting from here to there is one of the access problems. You got a piece of land over there, got a piece of land over here, there's some land in-between, how do I get there? Then the second question is how much access do I want? I think that's what you're addressing, Mr. Senator. It's not only, how do I get from here to there, but why can

I get from here to there, and I think the Federal Government agencies sometimes confuse that.

I think they're talking unfettered access. At least when I chat with them that seems to be what they're talking about.

But you have the third problem, and that's on the one that gets confused into the whole thing, and that is, what kind of uses can I make of your private lands other than crossing it to get from here to there but for certain purposes of what I want to make of them, the primary one of which is wildlife which wanders back and forth.

But also, my public—because your land is unfenced which is going from my land to my land—to cross your lands, it gets off and does their thing, whatever it might be. Which I did last Sunday for 2 hours, crossing private, public and any sort of lands, going wherever I pleased because there were no fences, but there was a road, and of course being the Wyomingite I am, I exercise my God given right to go where I please. Notwithstanding that I knew I was a trespasser at least a half to a third of the time. I'm probably one of the few who knows it. Most people don't.

So we have those two kind of access questions. I think my friends in the Federal agencies, when they're talking access, generally are talking; how do I get from here to there and how do I get everybody from here to there to make use of my lands. Unfettered.

Senator WALLOP. Would that be something that ought to be put in your, in your planning processes, both in the forest and—I mean—well, it seems to me, in preparation for this, and I've had an interest in it a long time, I've seen a number of studies, have a number of them along with me today by the Congressional Research Service and others, and one of the—it's a recurring problem, that the mention of the problem is never quite there because nobody seems to define it the same way twice. So until this comes down to some sort of planning process and conclusion, where it becomes your purpose to try to accomplish access for whatever reason—I mean, you know, you do it in rather specific ways. If you're leasing the resources of the land, the timber or the land, or the oil and gas or minerals that are on it, and there's very specific processes by which they will do it. But there does not seem to be such a specific process and such an attempt to engage the private landowner for the issue of public recreation.

Mr. ODEN. Well, there is a process. One of the problems is it takes so long in most instances that it doesn't seem like much of a process. We'll start out in a resource management plan identifying areas where we would need to get access for one reason or another, recreation or timber, et cetera, and show it generally and talk about it generally in a resource management plan. Then depending upon the comments and the concerns of the public about that issue in the resource management plan, we would go then to what we call an activity plan, put it in our transportation plan and start negotiating with the private landowners to get that access or easement across that area.

Senator WALLOP. That still is going to leave us with something of a gap because, you know, you're hearing two different things. There's a very specific process for your resource users, very indentifiable, and then you go through the management plan that's there, but when you come to the other one, it's either an adjunct to the specific process for the resources or—but when you're talking about it all by itself, it's sort of free float. I'm talking about recreation use or general public use besides this specific resource development here.

And it seems to me that when you look at the problem as it appears in reports, it is—if I can find them here, it's sort of fascinating. In one issue there are two separate conclusions by two separate studies on the definition of the problem and they sort of tell you how far apart things are. I thought I had one here but I don't. Here's another requirement of FLPMA where the closer look at the access issue, as well as other access needs of the BLM for your authorization reports. Two of these reports were prepared pursuant to section 318, FLPMA. BLM has no current plans to develop an additional 4-year authorization. In the first report, coming all the way from 1979 to 1982, it was stated at present BLM has legal access to only 42 percent of the 470 million acres of public lands. The rest, 270 million acres, is or could be blocked to public access. Legal access is necessary for the protection, development, administration, and use of the public lands.

Now, then you come down to another statement—I'm still looking for one other in which the assessment of the problem is totally different. Which—I guess the point I'm trying to make and define for the record is depending how you define access is dependent upon how you scope the problem, and in one case it's determined as to be virtually nothing of a problem, in the other case, the more extreme one is the one I just read, and so that, then it says this year, in the fiscal year 1987 budget justification, BLM estimates, estimate that up to 25 million acres of public land may be inaccessible. You've done pretty good work in 3 years from 400—what was that, 470 million acres, now you're at only 25 million acres. It seems the problems are being solved very rapidly. And yet I suspect that the problem is precisely the same in 1987 as it was in 1978—or, 1979 to 1982.

Mr. ODEN. Well, it does become kind of a free-floating issue. Here in Wyoming, out of that almost 18 million acres, most of the year probably only 3 to 4 million is not accessible at one point or in some fashion. Even though many people, like Cal mentioned, exercise their God-given right and went ahead and got to it, but during hunting season, it may be another 3 or 4 million acres that aren't accessible. All of a sudden a road that was open most of the year has got a gate or a sign across it during hunting season, and in many instances, for good reason, because of the problems with hunters and cattle, but it is a kind of a free-floating thing.

Senator WALLOP. Well, let me turn to Larry Kruckenberg. I'm disappointed the game and fish didn't see fit to talk to the issue of this panel. But one of the things that seem to me to be necessary in all of this is to find a means to put these groups together and not apart. And if the problem is one of access, what is the game and fish doing to make it attractive for more access to take place?

In other words, it strikes me that there is a human condition which everybody in this room can recognize, that human condition is that, sort of, "what's in it for me," especially if a guy is badly hurting, as most of Wyoming agriculture is, what is in it for him to make a little extra room for wildlife when he's going downhill?

Mr. Kruckenberg. Well, Senator, I think I'll address that in the solutions portion. In panel No. 4 I'll give you some specific examples. But I think basically our feeling is that the future ought to rest in reasonable trespass fees and in the landowner providing services, additional services over and above what they're doing now. As to the issue——

Senator Wallop. Now that is precisely the California plan which you criticized.

Mr. Kruckenberg. No.

Senator Wallop. I'm sorry, but it is——

Mr. Kruckenberg. No, it's not, and I think I need to clarify. It was our belief, Senator, that we could not talk about access policy laws and particular practices without addressing what we felt is an increasing trend here in Wyoming, relative to access, and that is privatization. It was included in literature that was sent out as part of this hearing and we think it is encompassed in the discussion this morning, but I will get to more specifics that do not resolve around the California system but stop short of that in the panel 4 discussion.

Senator Wallop. Let me ask you this. How does the Wyoming Game and Fish define the problem that was asked for in that, how do you identify it?

Mr. Kruckenberg. Well, we see access, as one of the other panel members indicated, we have to look at it by public perspective. And I think getting from point A to point B with private land in between as unfettered access, by your terminology, I think is what we see as the problem.

In other words, any form of restriction that might limit public participation of public lands would, in essence, be defined as an access problem. And I will again get into specific statistics we've gathered relative to the extent of that problem in the panel 4 discussion.

Senator Wallop. I invite any member of the panel, Howard or anybody else, to comment on anybody else's, or to add some dimension to the problem.

Mr. Schrinar. Senator I would just like to make one comment. That we've been involved with that, to some degree, over the past 2 years. We seem to be in a situation where there's conflict on every side and nobody wants to reach a common ground or resolution of the problems, and I would suggest that there are things that can be done and we're looking to the future, in State lands, to see what we can do to improve those lands, both for the benefit of the State, for the benefit of our grazing lessees and for the benefit of the wildlife, and I think it can be done.

And one of the projects our State forester is working on right now, as an example, is a living snow fence program, where you plant trees instead of building 20-foot-high snow fences. And as you drive from Cheyenne over to Rock Springs you see a lot of those monoliths, and we feel we can do it probably cheaper than maintaining those wooden fences. It's going to improve wildlife shelter, livestock shelter, forage.

I think if we all look in that direction instead of, "How do I keep the hunters and fishermen off," and the hunters and fishermen thinking, "Well, I want to go out there and do whatever I want to," on State lands and Federal lands, everybody can come out a winner.

But I think perhaps some of the groups are becoming too polarized and I would hate to see that. That's going to be to the detriment of everybody.

Senator WALLOP. Calvin.

Mr. RAGSDALE. One, you asked what's in it for me. Most of the landowners that I represent, I think, don't really ask that question. What they'd like, simply, is recognition for what they have contributed; which is about half of the wildlife forage or more in the State of Wyoming, which is a third or more of the water resources in the State of Wyoming, and things of that sort. They'd just like to be recognized and occasionally thanked and occasionally asked.

I'm here on western Wyoming's behalf. You got another organization that will be appearing later, but I'd like to take the opportunity—this has appeared in the upper right hand corner of their stationary for as long as I can remember. It probably goes back almost to the time of their creation in 1907 and it reads as follows:

> The only land claimed by this company within its range are the odd numbered sections where rights-of-way are not established to the public domain. The company offers to establish and define such rights-of-way upon application to the Secretary.

That's from here to there. But then they go on.

> All persons are hereby warned not to trespass upon any portion of said odd numbered sections, which is not to be used as a right-of-way to the public domain.

But here, Mr. Oden said at the outset, the BLM concedes they don't have a right to cross without some sort of activity. Here's an offer to define it, but there's a quid pro quo. If they want to define it they have to take on some responsibility for maintenance and liability and the like themselves, as does any individual.

So the problems, I think, are not in terms of the laws that exist, or the policies that exist, but in the practice. And that's not recognized in what people have contributed or taking advantage of offers they made to do these things in the proper way.

Senator WALLOP. Is liability a seriously growing issue?

Mr. RAGSDALE. I perceive it as such. I don't know that my clients do yet, but they're going to. I perceive it as a very serious problem. We have various—if I may? If I may for just a moment.

We have the public access problems and recreation and so forth. I spent the last 3 weeks, off and on, discussing with various and sundry oil companies on behalf of various and sundry private clients, what the nature of the indemnification agreement in the easement is going to be, because I, representing the landowner, and they, representing the oil company, in attempting to make use of my land, both have great concern over who has what liability because of the—their presence on the lands.

And the hope—at one time I wouldn't have worried too much about it because we knew that basically we owed our duty to some sort of business invitee. I'm not sure anymore what a business invitee is, but I know what a lot of trespassers are, and it concerns me greatly.

My clients are not yet perceiving it, but as I give my lectures from time to time in the privacy of our offices, they're going to perceive it, and they're going to get a lot harder to get along with on just this sort of thing because of the potential liability.

Senator **Wallop**. Larry, let me close with you

Mr. **Kruckenberg**. OK, just one final quick comment as to what's in it for me. One of the enclosures you had was an article I wrote for Renewable Resources Journal and it pointed out something I should—must be referenced here. I mentioned the three-quarters of a million dollars we'd pay out annually for coupons, but we have over the last 3 years—that is the game and fish, in cooperation are with the agricultural organizations—proposed a system, because we think the coupon system is really inadequate, proposed a system whereby we can reimburse the landowners for forage consumed by wildlife, and have developed a formula, and negotiations have been taking place.

But it's going to take legislative action to correct that. And up to this point that has not yet been accomplished, but I think it speaks to the fact that we recognize the importance of private lands and, in fact, by initiating the action it's going to end up costing our agency another half a million dollars, but we think it is a—it is deserving and in recognition of the importance of private lands.

Senator **Wallop**. Thank you all very much. I think most of you we'll see again at the concluding panel. We'll go next to panel No. 2, the private and commercial users of private and public lands who need or desire access and how the pattern of access developed.

That is Carolyn Paseneaux, Wyoming Woolgrowers Association; Jim Berger, Wyoming Stock Growers Association; Al Bastron, Wyoming Recreation Commission; Maurice Loomis, Wyoming Mining Association; Penny Vance, Wyoming Outfitters Association; Larry Mehlaff, Northern Plains Region of the Sierra Club; Richard Robataille of the Petroleum Association.

Carolyn, why don't you begin.

STATEMENT OF CAROLYN PASENEAUX, WYOMING WOOLGROWERS ASSOCIATION, CASPER, WY

Ms. **Paseneaux**. All right. My name is Carolyn Paseneaux, I'm here today representing the Wyoming Woolgrowers Association. The Wyoming Woolgrowers Association commends Senator Malcolm Wallop, Kate Dupont, and Tony Bevinetto for providing this forum as an initial step in examining the issues of access to public and private lands.

Individuals and industries involved in the access issue, be they representatives of industry or the environment, in the private or the public sector, usually are immersed in the specifics of their own business, be they ranchers, agency personnel, or environmentalists. The diverseness of the backgrounds of the panelists will, hopefully, give a broad perspective to the problems of access. With bravery we come here to expose the roots of the competing values involved in this issue and tackle the possible solutions. Getting the players from all sectors here today is really novel.

Over 200 years of our country's history is speckled with the use and management problems on our public lands. Vast acres of lands, especially in the western United States, are publicly owned but privately used. It is precisely this arrangement that challenges us here today.

In Wyoming, oil, gas, coal, and other minerals are extracted from the public lands by private companies. Public lands also provide timber for harvesting and grass for livestock grazing. All industries that grew and thrived due to the Federal Government's desire to settle the West and raise revenue for retiring the national debt.

Patterns of settlement in the West developed from the various schemes of disposal of public lands devised by the Federal Government. Neither the Homestead Act of 1862 nor the Timber Culture Act of 1873 met the needs of the early agriculturists who found 160 acres or even 320 acres an inadequate amount of land for raising livestock or for farming in the arid West.

This inability to obtain enough land to ranch led the—to the common law practice of controlling lands without having clear title by exerting control over the water source. Thus the low lands were settled based on the proclivity to water, a factor weighing heavily on the problems recreationists of the 1980's find in their quest for access to public and private lands.

Wildlife migrate to the water and the lands on which hay and grain are grown. Oftentimes the set of low lands surround public lands, in effect, locking those lands off to the public. This situation was not a scheme to undermine the recreationists of today but rather a case of fertile lands being settled and less desirable lands going unsettled.

A hundred years ago nearly everyone in our society understood those principles, however in our current urban-based society, such common knowledge has increasingly been removed from the population. The danger, of course, is the situation that we are confronted with today. We are isolated from each other. It is time we intentionally find a way to bridge that gap.

Colorado has initiated a program called Operation Respect and both New Mexico and California are helping landowners, as we heard earlier, to establish wildlife programs on private land which provides a hunter or fisherman access to private and public lands without the heavy conflict that we read about in the paper. There is a difference between a desire to gain access to the public lands and a need to do so.

Wyoming has key assets of natural resources, namely the public lands, which draw tourists to our State and our own citizens to the country. Permit me to illustrate this point of desire and need with a song many of you may remember which was made popular some 30 or 40 years ago by Roy Rogers, which personifies several major assets of Wyoming for ranching.

The lyrics go something like this:

> Give me land, lots of land, under starry skies above, let me ride through the wide open country that I love, but don't fence me in. Let me be by myself in the evening breeze, listen to the murmur of the cottonwood trees, send me off forever but I ask you please, don't fence me in. Just turn me loose, let me straddle my old saddle underneath the starry skies, let me ride to the ridge where the west commences, look at the moon till I lose my senses, can't look at hobbles and I can't stand fences, don't fence me in.

Now, the cowboy's cry is "don't fence me in," and the environmentalist's cry is "don't fence me out." These vast lands of Wyoming are abundant with wildlife and scenic beauty. The rancher enjoys them for those aspects as well as the hunter or the photographer. Many ranchers, however, step in hip deep for they depend on those lands for their livelihood.

The 1985 grazing fee review and evaluation study conducted by the Forest Service and BLM found some Wyoming ranchers almost completely dependent on the public lands for survival of their ranching operations. If they have lands that are low lands and they are blocking the public lands, they feel those are their private lands and they should not have to allow people across. They do so willingly in many cases.

How can a balance be found in weighing desires against needs? Reconciling these public and private interests is central to our mission today. Considering the vast changes in American life and attitudes over the past decades is necessary in understanding the dilemma. Not only has the population grown but the level of education and political awareness is higher today than when the public lands were settled. Certain basic——

Senator **Wallop**. Carolyn, can I ask you to give us a sort of summary statement?

Ms. **Paseneaux**. Yes; I can. I would like to say that in taking examples from the past and looking at how those lands have been acquired and how they have been accessed, we might look to the Second World War and look at the four-wheel drive which came into being because of that Second World War. That has had more to do with access on public lands than anyone can put their finger on. I would say that if we are going to settle this that we should look to what we have in our own State today, that is now ongoing and in process, which has to do with the Forest Service, the BLM, and the Governor's office, and work on the access problem. I would say that we should not go to legislation at this point, that it can only cause more problems than it's going to solve, and I would ask and plead today that we work together to do this within our own State and not have outside congressional legislation telling us how to solve our own problems.

Thank you.

Senator **Wallop**. Thank you, Carolyn.

Jim Berger.

STATEMENT OF JIM BERGER, PRESIDENT, WYOMING STOCK GROWERS ASSOCIATION, CHEYENNE, WY

Mr. **Berger**. Senator I'd like to introduce the testimony of the Wyoming Stock Growers. In polling various people around the State of Wyoming, including the Forest Service and BLM, there's very little evidence of substantial portions of Government land where the public is blocked out by private lands. Certainly no alleged millions of acres. Much of the controversy has been created by the desire to build membership in various organizations or to further the political ambitions of individuals.

The *Elk Mountain Safari* case has been singled out for attention because it's probably the largest single block of surrounded lands to attack as an example. Also in this case exists the jealousy attached to the fact that these ranchers were some of the first to promote and develop their recreational potential and enhance the wildlife. We also have people who are unwilling to accept the fact that ranchers, as well as urban people, have the sovereign right to control property on which they pay taxes.

As a landowner who has 35 to 40 miles of access road across his land, I'm well familiar with the problems associated with access. We have State, county, Forest Service, and BLM roads across our ranch. Also we have one road that provides a more convenient access to the BLM and forest that is privately owned and maintained completely by us and open to the public. Our experience has been that the public has absolutely no respect for the landowner, even where he's granted access with no compensation.

Cases of wanton destruction of wildlife have been documented along with butchering of livestock, shooting of cattle and horses, livestock hit and killed by vehicles, litter, destruction of fences adjacent to rights-of-way, damage to roads by traffic during impassable seasons, driving off the right-of-way damaging meadows, irrigation structures and forever shooting at protective signs. It must be remembered anything up to a half a mile is a target for today's rifle.

Some comment has been made that access should be provided in exchange for reasonable grazing fee. That trade-off has already been justified through the maintenance of wildlife habitat on private land with only a token payment, in the form of landowner coupons and damage claims. Wildlife numbers and seasons of use are much greater than the compensation.

The private land is the only protected habitat left in the State. It has been scientifically documented that wildlife is disturbed within a half of mile of traveled roads in timbered areas, and at much greater distances in open country. It is just another lack of respect to hunt and shoot wildlife while crossing private lands enroute to public lands.

The Federal agencies have made an effort in the identification of access to public lands. The Rawlins district of BLM has initiated a program with the intention of mapping all public access. These maps were made up and distributed, showing the public access along with all private roads built and used by the ranchers for his own crop and livestock purposes. The conglomeration of roads were not distinctly marked to differentiate the public roads and the private. This type of service only creates more confusion and animosity between the general rancher and the general public.

No credit is given to the rancher for the amount of time explaining maps and generally telling the recreationist how to get around. The agency maps do point out there's a considerable amount of private land open to the public in lieu of small isolated tracts of enclosed private lands.

Private landowners have not deliberately surrounded these lands, in most cases it is the poor land that was left over when the acreage was settled, or land given away by the Government.

Ranchers have been encouraged by the University of Wyoming, Wyoming Futures and various commodity groups to develop their recreational resources in order to survive.

The general consensus of the Wyoming Stock Growers is that the opening of more land to unorganized hunting and fishing will only diminish the ranchers' recreational resource and produce fewer business opportunities in Wyoming.

Consideration should be given to the fact that land values are significantly reduced when there are public roads crossing the lands. The liabilities incurred in allowing the public access were most probably to necessitate future closing of many of the remaining private roads through private property.

Thank you Senator.

Senator **WALLOP**. Thank you.

Al Bastron.

STATEMENT OF ALVIN F. BASTRON, DIRECTOR, WYOMING RECREATION COMMISSION, CHEYENNE, WY

Mr. **BASTRON**. Senator Wallop. I'm Al Bastron, director of the Wyoming Recreation Commission.

Although Wyoming includes vast amounts of public lands, access to much of these lands is across private holdings. As more people have turned to the outdoors for their leisure opportunities, private landowners have become increasingly concerned with actual and potential misuse by people accessing public lands. The issue has become caught between the public's right to utilize the public domain and the property owner's right to protect their property by—from damage by others. Resolution of the present situation is necessary so that both public and private rights are ensured of protection. However, in the perspective of the Wyoming Recreation Commission it is vital that involved parties and decisionmakers fully understand the importance of this issue and its accompanying effect on recreation, which it signifies for Wyoming.

Recreation means money to Wyoming's economy. Tourism and recreation combined are considered to be the second largest industry in the State. As the State, through the Governor's office and other State agencies, has considered ways to further diversify and develop Wyoming's economy, increased attention has been directed toward the role recreation has to play.

Various private organizations, at both local and state levels, have also focused attention to recreation resources. This attention is well warranted. The International Snowmobile Industry Association estimated that snowmobiling alone considered $14.2 million annually to the State's economy in 1980. Average expenditures at Wyoming State parks was estimated to total $17.9 million for 1982. New studies are now being conducted to update and refine these estimates and to identify the total economic impact on the State. Such expenditures are vital to local economies. Significant benefits are also realized by the State as well.

These dollars mean many things to Wyoming. Out-of-State visitor expenditures bring extra money into the State's economic system. Money spent in the State reverberates throughout the economy in a series of multiplicative ripples. This contributes to the economic base of the State.

In addition to its economic importance to the State, recreation also has a significant role in Wyoming's lifestyle and quality of life. Although identification of research—of recreation benefits is a developing field of knowledge, recreation has traditionally been viewed as a service that has benefits to both participants and to society. The Recreation Commission is studying ways that some recreation services might be provided by the private sector.

In Wyoming, recreation opportunities are dependent upon the availability of recreation resources. The 1985 State Comprehensive Outdoor Recreation Plan, commonly known as SCORP, indicated that federally managed lands were among the most frequently visited recreation areas in Wyoming. It is a safe assumption that Federal lands realize the greatest volume of recreation use in the State. SCORP identified that many of these primary activities on Federal lands involved picnicking, sightseeing, fishing, camping, snowmobiling, and hunting.

Recreation is a vital and intrinsic element in Wyoming's quality of life, supplying benefits to participants and society alike. Many of the opportunities for recreation in Wyoming are dependent upon lands or facilities administered by the Federal Government. Decisions made in Washington can have significant importance to Wyoming's economy and society. If access to these areas is curtailed, Wyoming can expect substantial disruption of recreational services and benefits.

Some types of recreation can be made to pay for themselves. The Wyoming Recreation Commission believes that where possible, fees collected for recreation should be returned to the managing agency for use in the management of recreation.

The Wyoming Recreation Commission would like to thank the members of the committee and the panelists and the public for the opportunity to present this information today.

Thank you.

[The prepared statement of Mr. Bastron follows:]

TESTIMONY OF ALVIN F. BASTRON, DIRECTOR
WYOMING RECREATION COMMISSION

Before the Public Lands, Reserved Water and Resource Conservation
Subcommittee
of the United States Senate Committee on Energy and Natural Resources,
Rock Springs, Wyoming
March 15, 1986.

Mr. Chairman and members of the Committe, my name is Alvin Bastron, Director of the Wyoming Recreation Commission. My testimony relates to the value of recreation to the economy of Wyoming as well as the use of Federal lands in the scheme of recreation throughout the state.

The following comment was received by the Wyoming Recreation Commission as a response to the 1984 resident recreation survey: "I have started (this letter) several times in a fairly rational manner, (but) became angrier as I warmed to the subject and soon got so rabid and raging that I tore them up. I'll make one last attempt to compose a letter that sounds less like a polemic, but still conveys the level of anger I have maintained for ten years. The subject of my outrage is the entire dismal picture of public access...". This is an issue that is charged with emotions on both sides. To understand the importance of this issue, one must first understand the land ownership and recreational supply patterns in Wyoming.

Although Wyoming includes vast amounts of public lands, access to much of these lands is across private holdings. As more people have turned to the outdoors for their leisure opportunities, private landowners have become increasingly concerned with actual and potential misuse by people accessing public lands. The issue has become caught between the public's right to utilize the public domain, and the property owner's right to protect their property from damage by others. Both sides can trace the antecedence of their position far back in American law and tradition. Resolution of the present situation is necessary so that both public and private rights are insured of protection. However, in the perspective of the Wyoming Recreation Commission it is vital that involved parties and decision makers fully understand the importance that this issue, and its accompanying effect on recreation, signifies for Wyoming.

Recreation means money to the Wyoming economy. Tourism and recreation combined are considered to be the second largest industry in the state. As the state, through the Governor's Office and other state agencies, has considered ways to further diversify and develop Wyoming's economy, increased attention has been directed toward the role recreation has to play. Various private organizations, at both local and state levels, have also focused attention on recreation resources. This attention is well warranted. The International Snowmobile Industry Association estimated that snowmobiling alone contributed 14.2 million dollars annually to the state's economy in 1980. Average expenditures at Wyoming State Parks were estimated to total 17.9 million dollars for 1982. New studies are now being conducted to update and refine these estimates and to identify the total economic impact on the state. As might be expected in a state such as Wyoming, hunting and fishing contribute even more. The Wyoming Game and Fish Department estimates that expenditures for fishing were 116.3 million dollars in 1984, and that hunting expenditures totaled approximately 95 million dollars in the same year. Such expenditures are often vital to local economies. Significant benefits are also realized by the state as well.

These dollars mean many things to Wyoming. Out-of-state visitor expenditures bring extra money into the state's economic system. Money spent in the state reverberates throughout the economy in a series of multiplicative ripples. This contributes to the economic base of the state. Many of the dollars spent by resident and non-resident recreationists are subject to sales tax. Those taxes provide added revenues for government at both the local and state levels. At present the total picture of just how significant these and other recreation activities are to Wyoming is not completely clear. Work is underway to improve our knowledge in this area. Few can refute the fact that recreation does contribute a significant amount to the Wyoming economy.

In addition to its economic importance to the state, recreation also has a significant role in Wyoming's life style and quality of life. Although identification of recreation benefits is a developing field of knowledge, recreation has traditionally been viewed as a service that has benefits to both participants and society. Provision of recreation opportunities allows citizens the chance to increase family togetherness, to relax and rejuvenate themselves, and to function more effectively in society, among a host of other benefits. Traditionally these benefits have been viewed as being meritorious to society in general. Therefore, recreation opportunities have frequently been provided by different levels of government as a service to their constitutents. As the Federal government reassesses its position on what services it will provide, state and local governments will have to consider what options they have available. Consideration is being given to ways that the state might supply additional recreation services. The Recreation Commission is studying ways that some recreation services might be provided by the private sector.

In Wyoming, recreation opportunities are dependent upon the availability of recreation resources. As the lead agency in the coordination of recreation for Wyoming, the Recreation Commission is very concerned about the management of recreation resources on Federal lands. Graph 1). shows a breakdown of the recreational acreage administered by different entities in Wyoming. It is readily apparent that Federal lands represent the bulk of the recreation land base. The 1985 State Comprehensive Outdoor Recreation Plan (SCORP) indicated that Federally managed lands were among the most frequently visited recreation areas in Wyoming. It is a safe assumption that Federal lands realize the greatest volume of recreation use in the state. The recreation activities that were identified in the SCORP as having the highest resident participation rates included several activities that are primarily enjoyed on Federal lands. These were picnicking, sightseeing, fishing, camping, snowmobiling, and hunting. For most of these activities information is sketchy about the percentage of use that occurs on Federal versus state or other lands. Information regarding the supply of certain types of facilities is available. The Recreation Commission inventoried the number of campsites administered by different levels of government in 1983. The number of individual family campsites, with access for all types of vehicles are shown in Graph 2). Again, it is apparent that the Federal government supplies the greatest percentage.

Recreation is an important contributor to the Wyoming economy. Recreation is also a vital and intrinsic element in Wyoming's quality of life, supplying benefits to participants and society alike. Many of the opportunities for recreation in Wyoming are dependent upon lands or facilities administered by the Federal government. Decisions made in Washington can have significant import to Wyoming's economy and society. If access to these areas is curtailed, Wyoming can expect substantial disruption of recreation services and benefits. The Wyoming Recreation Commission is deeply concerned about the need for resolution of this issue. But the Wyoming Recreation Commission is also very concerned about the course of Federal recreation management.

The Wyoming Recreation Commission supports the need for a speedy resolution of the access across private lands issue. This agency supports the other state agencies and the respective Federal agencies in their positions. The public needs to be assured that the Federal lands in Wyoming are not locked away from public use. At the same time the Wyoming Recreation Commission also requests that this committee consider other aspects of recreation management on the Federal lands.

Considerable confusion exists concerning exactly what is going to happen with recreation management by Federal agencies. As the State agency charged with recreation provision in a state that relies on Federal lands for so much of its recreation opportunities, the Wyoming Recreation Commission believes that more timely information must be made available about Federal recreation policies. State agencies concerned with the importance of recreation to Wyoming need to have sufficient time to consider available options when confronted with decreased committment to recreation. Federal agencies need to be in a position where they can anticipate possible reductions in services. For example, the Wyoming Recreation Commission would like to know if specific campgrounds will be closed, so that we can determine if something different must be done at alternative locations. At present it is often difficult for different agencies to exchange information regarding actual visitor use. Some agencies measure use in one fashion, others employ a different approach. Frequently use is roughly estimated, rather than measured or sampled. This problem is detrimental to a thorough understanding of the relative importance of recreation to an area or the state. The Recreation Commission has identified the need to define a consistent format for measuring visitor use in the Crossroads five year objective plan. This implies that what is needed is more complete and thorough information exchanges between the various state and Federal agencies.

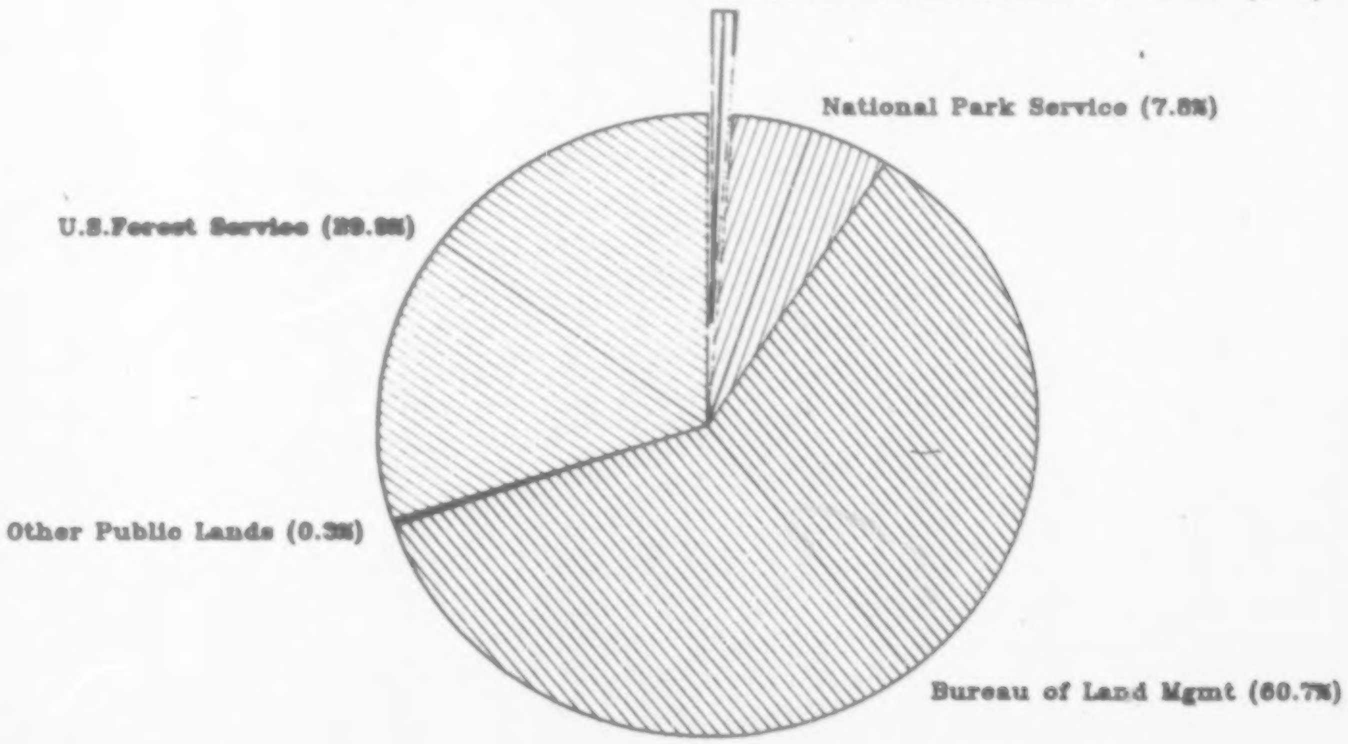
Consideration must be given to allowing state agencies the opportunity to fill-in behind Federal reductions. If a campground is to be closed, is it possible for a state agency to lease that area from a Federal agency when the state believes that the closure would adversely impact the area economy or recreation services. If Federal funds for trails in National Parks or Forests are unavailable, how can the state help to insure that important trail systems are still kept open? Again what is needed is better cooperation. Some of this can be accomplished without changing present administrative or legislative directions. Some will require changes.

Some types of recreation can be made to pay for themselves. The Wyoming Recreation Commission believes that where possible, fees collected for recreation should be returned to the managing agency for use in the management of recreation. In addition, consideration should be given to how administrative problems with fee collection might be overcome. The Wyoming Recreation Commission believes that consideration should be given to establishment of a program similar to the Knutson-Vandenburg fund used by the U.S.Forest Service to return monies collected from timber sales for forest management in the sale area.

In conclusion, the Wyoming Recreation Commission would like to thank the members of the committee, panelists and the public for the opportunity to present this information today. We at the Recreation Commission are very concerned with many of the issues that effect the management of the public lands. Many of the concerns and suggestions offered above will undoubtedly be proposed by other organizations or individuals. The Wyoming Recreation Commission would like to add its voice to those others. We are pleased to have been able to offer our assistance.

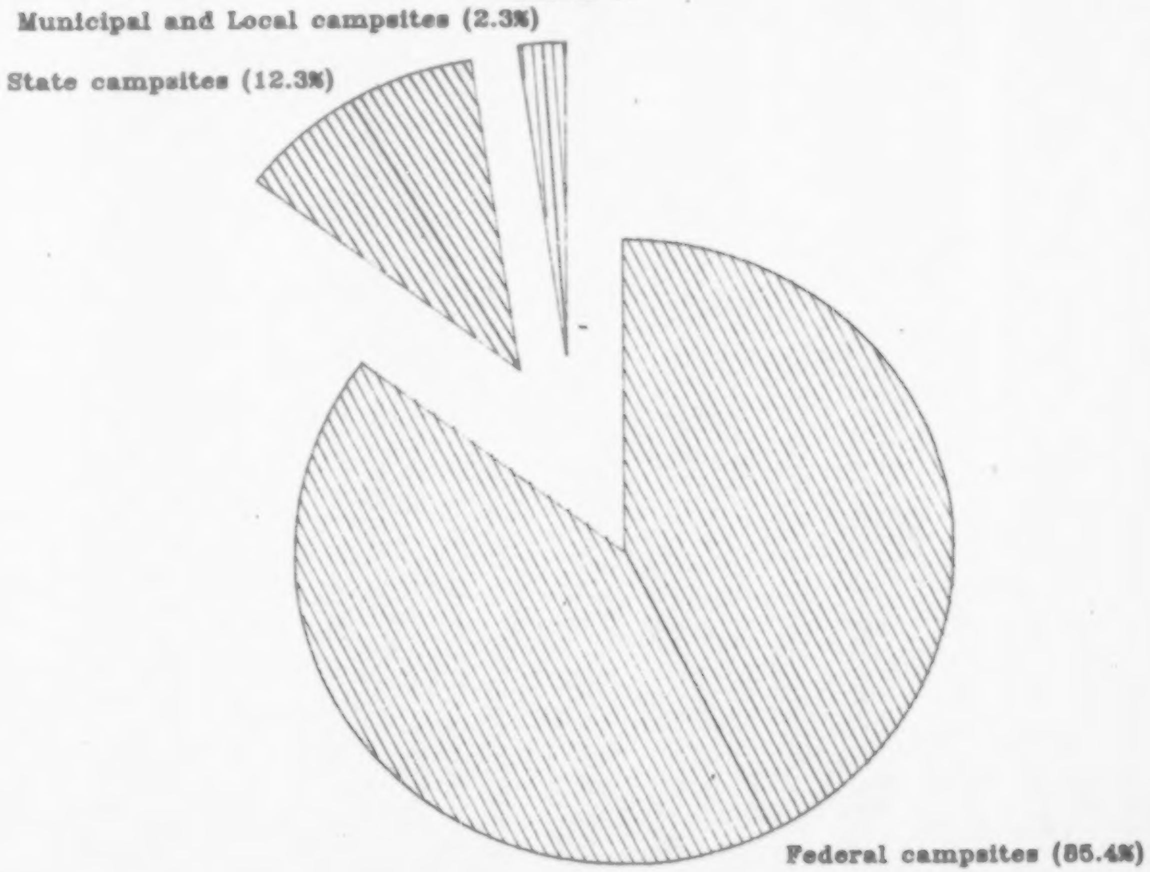
Recreation Lands in Wyoming

GRAPH 1.



Family Campsites

GRAPH 2.



Senator Wallop. Al, thank you, and your whole statement and the chart, the charts which you have on it, will be part of the, of the hearing record.

Mr. Bastron. Yes, sir.

Senator Wallop. I'd like to—I might just say, noting in your entire statement, a more thorough appraisal of it, one of the interesting things that is taking place is that these Federal resources which are most obvious are the ones most nearly filling up, most near to saturation. So if there's going to be a large expansion of recreational opportunity in Wyoming, it's going to very definitely have to come with the cooperation of, and with the genius of, the private landowners. I mean, you're going to have a really big expansion of it, and that's what I—that's what the purpose of all of this is about is to try to find not what puts us at odds with each other but what puts us on the same track to the economic benefits of the State, you know, and I see signs of that throughout your statement and I wanted to just tell you I appreciate it.

Mr. Bastron. Thank you, Senator.

Senator Wallop. Now, apparently there's no one here from the Wyoming Mining Association. And the Wyoming Outfitters, Penny Vance? (No response.) I guess they had weather troubles on the way down. We'll certainly hear them when they come. And Larry Mehlaff, I haven't seen him. Wendy Frueauf, from the Petroleum Association of Wyoming.

STATEMENT OF WENDY H. FRUEAUF, ASSOCIATE DIRECTOR, PETROLEUM ASSOCIATION OF WYOMING, CASPER, WY

Ms. Frueauf. Senator, Wallop, my name is Wendy Frueauf, I'm the associate director of the Petroleum Association of Wyoming. PAW is a division of the Wyoming Oil and Gas Association. We represent hundreds of large and small oil and gas companies involved in every phase of leasing, exploration and production, refining, and transportation activities throughout the State of Wyoming. Our members account for 90 percent of the oil and gas produced, and 90 percent of the wells drilled in the State of Wyoming. And our members employ some 25,000 people, statewide. Because such a large percentage of the State is owned and managed by the Federal Government, access to public lands is of paramount importance to our members.

Over the past 15 years with the implementation of land management planning, environmental and various land withdrawal statutes, access to the public lands has become increasingly restricted. Because of the interspersed nature of land patterns in a State like Wyoming, access to State and private lands has also been curtailed due to these Federal access restrictions. Oil and gas operators would generally prefer to work on private or State lands rather than on Federal lands because Federal regulations and restrictions to access and operations make many projects uneconomic or simply impossible to undertake. However the impacts of Federal access restrictions have clearly spread to adjacent private and State lands making the access problem somewhat universal.

Federal access problems—access in the broad sense—can be generally categorized into two primary areas; statutory land withdrawals and de facto land withdrawals.

Statutory withdrawals of lands pose the most obvious access problems since land withdrawn from multiple use can not be accessed by any means. These withdrawals come in the form of statutes designating lands as wilderness, national park designations, wildlife refuges, BLM wilderness study lands and so on. In the State of Wyoming, some 6.8 million acres are formally withdrawn from oil and gas activity through congressional action, amounting to nearly 25 percent of the State's Federal lands.

One of the most prevalent problems for the oil and gas industry in terms of access to the public lands is the problem of de facto withdrawals. These withdrawals include a large percentage of Federal land but they are subtle and more difficult to quantify.

For example, stipulations placed on oil and gas leases may prohibit access to the entire leasehold yet the land will appear to be open and accessible because it has been leased. The application of no-surface-occupancy stipulations as they are called, is widespread in areas of environmental sensitivity. Other stipulations which are less severe in nature, also pose serious problems to access however.

Seasonal stipulations, which prohibit access to the land during certain times of the year for wildlife, drainage, or other environmental reasons, can cumulatively amount to a total access prohibition on a lease. But because each lease would have to be individually analyzed to determine the extent of these restrictions, the exact number of acres withdrawn due to restrictive lease and operating stipulations is impossible to ascertain.

Another form of de facto withdrawal prevalent on Federal lands is the failure on the part of the agencies to lease lands that are open and available under public land laws. Both the Forest Service and the BLM have implemented de facto withdrawals in certain areas by their refusal to process oil and gas leases. Some estimate that as much as two-thirds of all Federal land is off limits due to de facto and statutory withdrawals.

The Federal oil and gas leasing and permitting procedures are elaborate, detailed processes well documented by land management agencies and are well known to you and other members of the subcommittee.

Private lands, on the other hand, are leased and permitted as private transactions between willing parties. In light of this I will touch briefly on the process for obtaining permission for oil and gas exploration and production on private lands.

In some instances the rights to the minerals under privately owned lands may have been retained by, or sold wholly or partially to someone else by, a previous owner. Thus, a farmer who owns the surface rights but not the mineral rights may plow his fields between producing oil and gas wells, yet not receive any compensation for the minerals extracted; however, the surface owner is usually paid for allowing entry to and any damage resulting from the development of the subsurface mineral rights. In addition, the surface owner may receive a right-of-way payment for any pipelines or roads that may be built across the land, as well as rental on the lands occupied by tanks and other equipment needed to find, produce, and transport any discovered petroleum, if that use prevents the surface owner from using his property.

After 1916 mineral rights under Federal lands sold to private owners were reserved by the Government as part of the public domain. In these areas, permission to enter the land may be obtained from the owners of the surface rights; however, the right to drill for, or extract the minerals from beneath those lands, involves obtaining a contract, a lease and a permit to drill from the Federal Government.

Private mineral rights owners can explore for and produce minerals from their own lands, but the financial risks generally make the do-it-yourself approach impractical. It is more likely the landowner will choose to lease or sell the mineral rights to someone more technically qualified and financially able to do so.

If the owner decides to lease its oil and gas rights, and there is an individual or company that wants those rights, the parties must sign a mineral lease. Negotiations usually are handled by a "landman" representing the oil company wishing to lease the land. It's the landman's job to negotiate the lease contract and, in some cases, to research deeds, clear titles and reconcile surface and subsurface mineral rights.

I won't go into the details of what the lease provides, but it is in our written testimony.

Something that I have not addressed in my written comments, or had planned to address in my oral comments but I think, perhaps, needs to be addressed here today. That it is the roads, built by the oil and gas or mining companies, which are used, retained, or reclaimed, to facilitate or impede access to the public lands in the State, whether they're observed by the Federal Government, the State or the private, the private landowner, and I haven't seen anyone address that point today. But that is how we obtain access, or impede access, to most of the lands in Wyoming because of the nature of the land. Perhaps that is something that perhaps could be discussed further on.

And I appreciate the opportunity to comment today.

[The prepared statement of Ms. Frueauf follows:]

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COMMENTS OF

WENDY H. FRUEAUF

ASSOCIATE DIRECTOR

PETROLEUM ASSOCIATION OF WYOMING

BEFORE THE

PUBLIC LANDS, RESERVED WATER

AND RESOURCE CONSERVATION SUBCOMMITTEE

OF THE

UNITED STATES SENATE COMMITTEE

ON ENERGY AND NATURAL RESOURCES

CONCERNING

ACCESS OF PUBLIC AND PRIVATE LANDS

MARCH 15, 1986

ROCK SPRINGS, WYOMING

PETROLEUM ASSOCIATION of WYOMING

330 South Center, Suite 115
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Mr. Chairman, my name is Wendy Frueauf. I am the Associate Director of the Petroleum Association of Wyoming (PAW), a division of the Rocky Mountain Oil and Gas Association. PAW represents hundreds of large and small oil and gas companies involved in every phase of leasing, exploration, production, refining and transportation activities throughout the State of Wyoming. Our members account for 90% of the oil and gas produced and wells drilled in Wyoming and employ some 25,000 people statewide. Because such a large percentage of the state is owned and managed by the Federal Government, access to public lands is of paramount importance to our members.

Over the past fifteen years, with the implementation of land management planning, environmental and various land withdrawal statutes, access to the public lands has become increasingly restricted. Because of the interspersed nature of land patterns in a state like Wyoming, access to state and private lands has also been curtailed due to these federal access restrictions. Oil and gas operators would generally prefer to work on private or state lands rather than on federal lands because federal regulations and restrictions to access and operations make many projects uneconomic or simply impossible to undertake. However, the impacts of federal access restrictions have clearly spread to adjacent private and state lands, making the access problem somewhat universal.

Federal access problems can be generally categorized into two primary areas -- statutory land withdrawals and de facto land withdrawals.

STATUTORY WITHDRAWALS

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DE FACTO WITHDRAWALS

One of the most prevalent problems for the oil and gas industry in terms of access to public lands is the problem of de facto withdrawals. These withdrawals include a large percentage of federal land, but they are subtle and more difficult to quantify. For example, stipulations placed on oil and gas leases may prohibit access to the entire leasehold yet the land will appear to be open and accessible because it has been leased. The application of no-surface-occupancy stipulations, as they are called, is widespread in areas of environmental sensitivity. Other stipulations which are less severe in nature, also pose serious obstacles to access, however. Seasonal stipulations, which prohibit access to the land during certain times of the year, for wildlife, drainage, or other environmental reasons, can cumulatively amount to a total access prohibition on a lease. But because each lease would have to be individually analyzed to determine the extent of these restrictions, the exact number of acres withdrawn due to restrictive lease and operating stipulations is impossible to ascertain.

Another form of de facto withdrawal prevalent on federal lands is a failure on the part of the agencies to lease lands that are open and available under public land laws. Both the Forest Service and the BLM have implemented de facto withdrawals in certain areas by their refusal to process oil and gas leases.

One noteworthy example is the Shoshone National Forest which for the past eleven years has refused to process lease applications on the Southfork area of the Forest. This type of de facto withdrawal stems from internal policy decisions made by the agencies, yet they are required by law to be reported to Congress as formal withdrawals. This problem is becoming widespread in the Forest Service and the BLM. No-leasing decisions in land management plans are another common mechanism for withdrawal of lands from access for mineral activities. These decisions are made in the planning process and provide the agencies with a convenient tool to keep controversial lands in a de facto withdrawal status.

Federal land management agencies, perhaps unknowingly, create severe access problems through the normal regulatory process for oil and gas operations. Frequently, overly restrictive lease or operating stipulations are applied when less restrictive conditions would suffice. For example, the Wyoming BLM recently adopted a package of so-called standard stipulations which would apply to all oil and gas leases. One of those stipulations prohibits construction on a lease "during periods when soil moisture is high, or when soils are frozen", conditions likely to exist in Wyoming for more than several months a year! Access problems such as this are often caused by a misunderstanding of the impact of such provisions and by the failure of land managers to look at alternatives to overly restrictive stipulations when analyzing environmental concerns.

Some estimate that as much as 2/3 of all federal land is off-limits due to de facto and statutory withdrawals.

FEDERAL AND PRIVATE LEASING AND PERMITTING

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In some instances, the rights to the minerals under privately owned lands may have been retained by or sold wholly or partially to someone else by a previous owner. Thus, a farmer who owns the surface rights--but not the mineral rights--may plow his fields between producing oil and gas wells yet not receive any compensation for the minerals extracted. However, the surface owner is usually paid for allowing entry to and any damage resulting from the development of the subsurface mineral rights. In addition, the surface owner may receive a right-of-way payment for any pipelines or roads that may be built across the land, as well as rental on the lands occupied by tanks and other equipment needed to find, produce and transport any discovered petroleum, if that use prevents the surface owner from using his property.

After 1916, mineral rights under federal lands sold to private owners were reserved by the government as part of the public domain. In these areas, permission to enter the land may be obtained from the owners of the surface rights. However, the right to drill for or extract the minerals from beneath those lands involves obtaining a contract, a lease, and a permit to drill, from the Federal Government.

Private mineral rights owners can explore for and produce minerals from their own lands. But the financial risks generally make the do-it-yourself approach impractical. It is more likely that the landowner will choose to lease or sell the mineral rights to someone more technically qualified and financially able to do the job.

If the owner decides to lease the oil and gas rights--and there is an individual or company that wants those rights--the parties must sign a mineral lease. Negotiations usually are handled by a "landman" representing the oil company wishing to lease the land. It's the landman's job to negotiate the lease contract and, in some cases, to research deeds, clear titles and reconcile surface and subsurface mineral rights.

The written agreement spells out the terms of the lease. The lease agreement also establishes the annual rental to be paid by the lessee during the life of the lease; the percentage of the value of the minerals extracted (royalty) to be paid to the owner, if the search finds commercially producible amounts of petroleum; the length of time a non-producing lease will run before the rights revert to the owner, and the resolution of various surface concerns.

CONCLUSION

The most serious problem facing the petroleum industry today on public lands is that of access. The continued withdrawal, both through statutory and de facto means, poses a fundamental threat to the industry's ability to explore for and produce the nation's petroleum reserves. With reserves sharply declining over the past years and marginal wells being abandoned due to falling prices, it is evident that our dependence on foreign petroleum sources will increase. To avoid another threat to our economy and security, we must be allowed to develop domestic resources. In essence, we must be granted access to the lands managed by the federal government.

We applaud the Subcommittee's interest in these problems, and thank the Subcommittee for the opportunity to testify here today. I will be happy to try to answer any questions you may have.

Senator **Wallop**. Thank you. I regret, and I hope and believe we'll have the statement from the Sierra Club and Outfitters Association and Mining Association.

I'm troubled by the idea that has sort of gained purchase in here, which I think is not certainly what I intended—and certainly not what those representing the land users of the State are here for—when I said, "What's in it for me?"

Let me pose to you this question, all of you here. Why, when I am in the grips of severe economic hardship, maybe even threatened with bankruptcy, would I willingly embrace increased liability, increased nuisance of damage, increased competition for my forage or resources, and that's not greed, that's not anything, that's just an expression of survival.

And I think that, you know, if we're going to have the kind of relationship that exists, necessarily there must be a recognition, you know, that if a guy is sitting there and he's teetering on the edge of bankruptcy, and then suddenly along comes a big liability suit—maybe it's even frivolous—but for him to contest it might be the last thing that he has and topples him over. There is real concern that you don't want to embrace any more trouble when you're surrounded by trouble. We've seen big lists of bankruptcies going on.

Jim Berger, I'm going to ask you: What would happen to these lands and ranchers when these bankruptcies begin to take place? How do the stock growers view what the next likely results will be, in terms of these events that bring us here today?

Mr. **Berger**. Senator, our experience has been in our part of the State, and I'm sure it's very similar to the area you're familiar with, the Sheridan area, that when individuals go broke the neighbors, generally, are not in the position to buy the land now. Maybe at one time they were but they're not now. So this land will be acquired by nonresident landowners. And our experience has been that they're less cooperative to the general public, they're less cooperative particularly to the people. They don't know the businessmen in town, they don't have that personal relationship, and you'll find more locked gates and more access problems as these individuals go down the tubes.

Senator **Wallop**. Carolyn, generally, speaking, do the woolgrowers have the same experience?

Ms. **Paseneaux**. I would like to just add something to that, that perhaps isn't well known. Wyoming is the third largest sheep State in the Nation and it is the leading range State. When our range operators would be foreclosed upon or somehow lose their ranches, those ranches are not bought up by people who will have large range herds of sheep. The sheep population in the State of Wyoming would go down drastically if the large ranchers running sheep would go out of business.

Senator **Wallop**. Al Bastron, let me, let me ask you about the survey that I quoted that said that 80 percent of the people found that they were restricted from access to their—I'm trying to find the exact quote that I had here from your study. The 1985 State Comprehensive Outdoor Recreation Plan discovered over 80 percent of those questioned did not have the opportunity to enjoy Wyoming's three most popular activities.

I've got to say I find that an inconceivable statement. Can you explain to us what, you know, who were in the surveys? And what was the question that was——

Mr. BASTRON. Senator, I'm not familiar with the exact wording of the question, but many of the people who were surveyed were people who—they're out-of-State residents that have come to the State parks, and when we passed out the questionnaire among those people it was a small representative sample. They're the ones who made this comment. We received very few comments as to what that access problem was. They did indicate they had some problems but they didn't really specify exactly what the problem was.

Senator WALLOP. Is part of the problem—or, could part of the problem be, let me state it this way, that the expectations derived from advertising, or from a variety of things, are different from the reality of what's here?

I mean, I would think you would be hard pressed to get a statement like that out of the residents of Wyoming, who sort of know the lay of the land and how to get to the forest and how to get to those pieces of ground that are open, and do know some landowners and ranchers and other things so they can picnic and fish and walk and do the other things.

Is the expectation created by advertising or by stories and magazines or other things, that all these public lands are somehow or another homogenus, that they do not comingle with private lands, that there are no troubles, that we have 17 million acres of BLM in the State, come and see it? I mean, do we—I guess, do we raise expectations that we can't fulfill?

Mr. BASTRON. Senator, I think that's correct. In our advertising, for instance, of the wide-open spaces, of all the land that we have in Wyoming, that's over—somewhere around 50 percent of it is in public ownership. I think many of the people who come think that they have a right to that land, and regardless of what problems they have or what access problems, or how they get to that public land, they feel that land is there.

It's one of the things that we, of course, reviewed when we were preparing this statement was the comment you had made in one of your news releases was about the two hunters that were up at Rozet, WY, that thought they could go hunt, and pretty soon here's the two cowboys came along and said, "You're trespassing on private property." I think this is prevalent among our out-of-State people who come, either as a tourist through the State or who have a destination here. And of course, we do have many people from Colorado that use our State parks. And many times this access may be denied to them. A lot of times they think they can come in here and go wherever they want to go, that's OK.

Senator WALLOP. Part of that—although it would be hard to imagine it from Colorado, but coming from an Eastern State where there are no public lands, they don't have much appreciation of what the public domain is about or how to get to it.

What can we do, as a State, to continue to attract these people who, as you pointed out, are necessary for the income of the people of Wyoming and yet not have them go away sulking because the level of expectation which was created is simply impossible for us to deliver? How can we, how can we still attract them—because you and I know, and I think everybody in this room knows, there are enormous opportunities here—but not offend them by the reality of certain things?

Mr. **Bastron**. Well, Senator, I know a number of years ago I used to see a lot of publicity about obtaining permission to get to public lands and permission to go on private lands, and it seems like I don't see this anymore. I see very little publicity that says you should, out of—whether it's legal or whether it's out of common courtesy—make sure that you have permission, or that you know where you are on private lands to get to those public lands.

Senator **Wallop**. Has the Recreation Commission contemplated putting together, within counties, for example, lists of cooperating landowners, people who might be willing to provide, for a fee or even for some other recognition, access to some extent to the traveling public? Wouldn't that be something to examine? In other words, instead of telling them, well, come out here, and finding them wandering around and irritating both the landowner and the person who thought he could move freely, wouldn't it be better for us to try to develop some kind of a scheme where more visible, more certain, more predictable access would make the family vacations better?

Mr. **Bastron**. I think that's correct. We haven't done anything like that but that's an excellent idea.

Senator **Wallop**. Seems to me there's opportunities here for both. The Recreation Commission, which is devoted to expanding and enhancing the quality of the recreational experience in Wyoming, so that more income can be derived across the breadth of the State, have a landowner situation which is verging on critical. Now, maybe there are opportunities. Not all will want to and not all who want to will be able to do it well, but over the course of a little time, within counties and thereby the communities of Wyoming. Seems to me there could be some identification of opportunity.

What I'm going to do now is ask—We have maybe a little more than 15 minutes, and since some of the panelists didn't show up that were scheduled here, I'm going to ask for questions from the floor. If you wouldn't mind, if you have a question to ask, if you'd just identify yourself and perhaps come down here, if you can easily, but I think we can probably hear in this room if it's not.

Questions about the subject of this panel, which is—I'll read it precisely. Private and commercial users of private and public lands who need or desire access and how the patterns of access develop.

Any statement or question from anybody in the audience?

Yes, sir.

STATEMENT OF BILL TOLLIVER, RANCHER, ROCK SPRINGS, WY

Mr. **Taliaferro**. Senator, I think so. I can speak loud enough—Bill Taliaferro, Rock Springs, a rancher.

If there are foreclosures, and I'm going to speak basically of western Wyoming which I know pretty well. If you'll look at the land patterns in southwest Wyoming you will see they're very scattered. And our acreage, we own about 17,000 acres scattered from in the Rock Springs area up into the Kemmerer area, into Sublette County.

If we're faced with foreclosure, or if we're going to look at a financial problem, my first response is going to be looking at subdivision. That is selling off small units of ground adjacent to water, and that's primarily where this deeded land is at, to maximize the most income I could possibly get at the present time.

And I think when you look at this as a wildlife operator, game and fish, or as a sportsman, if you have more subdivisions, more houses, you also increase the domestic predator problem, you've reduced wildlife habitat, and I'm not sure that's exactly what everybody in this group wants to do.

And so I think it behooves everybody to try to see that maybe some of these people stay in business. I'm not talking about subsidizing, but don't make it so economically hard I can't stay in business, because I think in some cases, at least in wildlife habitat, we're doing a marvelous job of providing that, and also a marvelous job of providing a lot of public recreation that we get nothing for on our private lands that wouldn't be there if they were subdivided.

Senator WALLOP. Is there anybody here who has any experience with or desire to experience the provision of recreational opportunities on your land, or who has experienced it from the other perspective, seeking recreational opportunity and has it had to—or, has gone through somebody who did provide it for a fee?

Mr. HAY. Senator?

Senator WALLOP. Yes.

STATEMENT OF LEONARD HAY, LANDOWNER, ROCK SPRINGS, WY

Mr. LEONARD HAY. Leonard Hay. I own various lands in Sweetwater and Fremont Counties. I have, with the Bureau of Land Management, agreed in 1968 we put a simple sign up, hunting—Private and Federal Lands Are Open For Hunting and Fishing Use, and then it relieves me of liability.

But, you know, I think there's been a hell of a lot made out of this access that isn't really warranted. All my lands that I own personally have been open for hunting and fishing and I know many other pieces of land in this area that are open for hunting and fishing.

Senator WALLOP. Let me ask Jim Berger and Al Bastron, and Carolyn Paseneaux; is liability a topic of concern in the Woolgrowers or Stock Growers and if so, what, if anything, are your organizations doing about it?

Mr. BERGER. Senator, I'll be first, I'll have to probably bow to the legal knowledge of Carolyn here, but we're very concerned. I think it being brought more to our attention all the time, and I think the recent legislature and the situation that's occurring there has made it more evident to us we do have a problem.

As far as our organization, we've been participating in legislation in this past session, which isn't over yet, to identify what our liability is. I think we're really pretty confused at this point as to just what all our problems are.

Carolyn?

Ms. **Paseneaux**. I can only reiterate what you have said Jim. This legislative session down in Cheyenne that is ending today has been replete with talking about the liability, be it a doctor, be it a municipality or be it a rancher who invites hunters, fishermen, rock hounds, whatever, onto the property. There are some legal definitions, and Cal Ragsdale can do this much better than I can. If you invite someone in as an invitee there is a difference than if that person is trespassing. You are held more liable for that person if you have invited them on your property.

However in some States, such as California, those distinctions are beginning to meld together so that you are are beginning to look at a situation where you are becoming liable even for that trespasser, and I would suggest until that issue is settled, or until we have a good handle on it, that each rancher be very careful and knowledgeable about what you're doing when you have the people on your property.

We don't know where the bottom line is with that liability thing right now, we don't know whose fault it is, we don't know, as I say, where the blame lays, and where the answers are with it.

I would like to say too, that in reference to what Leonard Hay has said, I saw a recent survey that the BLM had taken and it said there were only 4.8 percent of the total acres of public lands in Wyoming that are not accessible because of access, and I don't know how accurate that percentage is, but that's the kind of thing we need to be looking at; what are we dealing with. Because we don't know.

Senator **Wallop**. What's the experience with regard to the oil and gas operations? Is there a sense of increased liability that is taking place and where does it fall? Does it fall on you or the private landowner or a combination of you or——

Ms. **Frueauf**. Senator, I don't know that I can really address that problem with anymore certainty than anybody else has, but I think it's more likely that the liability would tend to fall with the oil and gas company simply because they may be viewed as an entity that is able to pay for the liability in case of, you know, any major financial obligation.

But we too were very perplexed by the liability insurance question that was being addressed in the legislature this year, and I think we all were so concerned but we weren't sure what we were talking about.

But we certainly see a proliferation of liability problems as we go on in this decade. And as far as oil and gas companies are concerned, if there are restrictions to access to their properties while they are operating, it is certainly because of liability and safety reasons, and they're probably more and more concerned with that than ever before, just as the rancher is when they invite someone onto their property, but I don't think there are any immediate answers.

Senator **Wallop**. Well, it's hard to gets the answers if you can't define yet what the problem is. That's one of the things we're trying to do here.

Jim Berger, going back to you, and what your response to my earlier question was, and we've heard Leonard Hay's statement about the public's accessibility on his private and leased lands, do you have any sort of experiences down in this part of the State where people have been forced into sales or foreclosures and the new owners have been—are they as generous as his statement would indicate some local ranchers are?

Mr. BERGER. I think one experience we're quite familiar with was a purchase of property by a Texas interest, and when you say the land pattern in Texas is completely different than in Wyoming, everything is owned, everything is locked up, everything is protected by the Texas Southwest Cattle Raisers Association, or Livestock Raisers I think I should say, goat involved, some sheep, but those people are not at all familiar with our situation, and therefore we're going to see more complicated access problems, particularly from people that are not involved at all in public land States.

Senator WALLOP. I want to thank this panel, and again say that the statements from these Sierra Club and Outfitters and Mining Association will be most welcome to be included as part of the panel.

I'm going to take a 5-minute break here for our loyal recorders, and other members all around, and we'll start again at just a little bit past 11 with panel No. 3, which is the identification of access problems and the need to resolve or reduce conflicts, current strategies and agreements for providing access on public and private lands. We'll take just a short break here now.

Thank you.

[A recess was taken.]

Senator WALLOP. Calling the subcommittee back into session. Panel No. 3 is the identification of access problems, the need to resolve or reduce conflicts, current strategies and agreements for providing access on public and private lands.

Bob Thomas of the Wyoming Futures Project; John Hay of the Rock Springs Grazing Association; Larry Bourett of the Wyoming farm bureau; Chris Peterson of the Wyoming Wildlife Federation; Bob Goodman from the Wyoming Economic Development and Stabilization Board.

There's Bob Thomas—that's not Bob Thomas. He was here a second ago. Here he comes now.

John, why don't we begin with you while we're waiting. John Hay of the Rock Springs Grazing Association.

STATEMENT OF JOHN HAY, ROCK SPRINGS GRAZING ASSOCIATION, ROCK SPRINGS, WY

Mr. JOHN HAY. I'm going to confine my remarks strictly to the Rock Springs Grazing Association. The Rock Springs Grazing Association was brought into being in 1915. And in 1860 the Government, in order to have the transcontinental railroad, they started to sell their land that had been granted by the U.S. Government, trying to develop the area.

Our lands run from north of the railroad right-of-way 20 miles, and they run south of the railroad right-of-way 20 miles. The area we cover, and the area I'm talking about, runs from the Black Fork on the east, you know, where the highway crosses the Black Fork, and we run east to Tipton. We own or lease every other section of ground. We lease from the Union Pacific Railroad, we lease from the State of Wyoming, and we have some private leases. And at the outset, I want to state that I'm confining remarks on access to the Rock Springs Grazing Association.

The reason is I've told you that the public land grant runs from the State line east and to the line west with this 40-mile area. Now, each one of these owners of these checkerboard areas have different problems. We have some common problems but they have problems that we don't have. I'm not speaking of the land grant in general, I'm talking specifically of the Rock Springs Grazing Association.

Now, there's been many changes in the whole livestock industry over this time. One of the great problems in the early days was that the railroads wished to have access by people who did not belong to the land. And they, in many cases, built—they did not build but they reserved trailing areas so that anyone coming from another area would have access to the railroad.

Now, we've had a tremendous change in the marketing of livestock, both sheep and cattle, and the stockyards are practically all gone. The central markets are practically all gone, and none of the commercial feeders, and various farmers, and various feeding States do not ship by rail, they hired the truckers or have their own trucks. They come right to the farm or ranches, as the case may be. They pick up the livestock and they take them to their own feed lot.

Now, that's made a tremendous change in the operation of all these various outfits, and as a result, where we used to have some problems with that, that's gone.

In the various uses on our checkerboard areas, we have industrial users, we have mining users, we have trona users, we have gravel pits, we have about everything you can think about.

Now, down through the years in all those cases, the prospective owner of these various properties, and if they cross our lands in developing their particular product, they come to us and they either work out a lease or a right-of-way or some arrangement so we're all protected. In addition, when we sell a right-of-way or we sell a lease, drill an oil well, mine or whatever, we always put a clause in the contract saying that the developer must hold us harmless in case of any liability with any of the functions they're carrying on.

On all the other arrangements, they're worked out on a mutual basis, and we have a great relationship with all of these various industries and various needs.

So I would say from the standpoint of problems, Malcolm, that we really don't have them. We make all of these private treaties with these various people that's satisfactory to them and it's satisfactory to us, and the end result is that it's very, very successful.

And we're like everyone in the West, we're interested in seeing the country develop. We're interested in seeing the country cared for. We feel we're a great conservationist. And in the event of the property being exhausted, we ask that the permit holder, owner, developer, come in and restore and reseed and put the area back in the original shape. That works out greatly to our benefit and also to their benefit. And we're very proud of that. And I must say that all of our relationships with these various people is handled in the most satisfactory arrangement to both parties.

Now, I told you that we owned or leased about 1 million acres of ground, and when the Taylor Grazing Act was passed in 1934, July of that year, it more or less stabilized the grazing demands on the public domain.

Now, we were a party to that when old Congressman Taylor introduced the legislation that was passed. We've cooperated with them steadly since then.

We have the largest license of any permittee in the United States. We pay the largest grazing fee of anyone in the United States. And I must say, going through this adjustment, I've always felt the Taylor Grazing Act was the best land use program that the United States has ever had, and the cooperation between the landowners and the United States has been tremendous——

Senator WALLOP. John, can I ask you to summarize a little bit so we can get on to the rest of the panel? We've run too many.

Mr. JOHN HAY. OK. I'm sorry I'm running over. Just one statement on the wildlife. The question was raised here by one of the people.

On the wildlife, we meet with the local wardens and local people handling the problems in the field. We've met with the State Game Commission, and we have one problem in this area. The division of ownership is roughly about 52 percent from the Rock Springs Grazing Association and about 48 percent for the United States, and as a result, these wild game—the antelope, the deer and the elk—we've insisted all of them, when we had the big problem up in Jackson Hole, we set up one of the first transfer contracts with them to handle that, and we have a great cooperation there, but we insist that the Game and Fish Commission and the local wardens realize these game animals run on 50 percent of the land in the area, and all we ask is we never—We've never charged a coupon, the hunters or fisherman, the water on the Green River, they hunt and we've never charged a fee, we've never collected a game tag and we do everything we can with these people to handle this problem. I'm just talking about adjusting these problems on our land, I'm not speaking of any other checkerboard land.

And I want to thank you for your time. Sorry I over run.

Senator WALLOP. Thank you.

Bob Thomas.

STATEMENT OF DR. ROBERT H. THOMAS, PRESIDENT, UCROSS FOUNDATION, WYOMING FUTURES PROJECT, UCROSS, WY

Dr. THOMAS. Thank you, Senator Wallop. I'm Bob Thomas. I'm the president of the Ucross Foundation, in that small village of Ucross in northeastern Wyoming, and I'm here to represent the Wyoming Futures Project today.

The foundation is barely 3 years old, exists for two missions, one to provide an artists residence program, but the second part of the mission is to be a convener and a facilitator, to provide a conference setting, a retreat setting, to bring parties of varying ideologies and varying opinions to the table to work out solutions in a collaborative fashion. It espouses the philosophy that collaboration is better than competition in reaching solutions, particularly in times of adversity.

It was in the context of the second part of this mission that in late 1984 it challenged Governor Herschler to begin the Wyoming Futures Project. He, in turn, made a presentation to the legislature and the Wyoming Futures Project operated throughout 1985 and finished up its first phase.

The Futures Project solicited information in its role, again, as one who was not-proactive with respect to policy, but a convener and a facilitator, from three different sources. The first source was to engage SRI International of California, one of the worlds most prestigious research firms out of California, to do a complete study of Wyoming, reaching into its own data banks and making extensive studies from border to border.

The second resource was a series of seven roundtables that were conducted at Ucross representing seven different segments of the economy and of the special interests in the State.

The third resource was a meeting of 1,000 people which gathered in Casper on October 19, 1985, to hear the recommendations of the first two resources and to respond, in turn, with their own ideas. This was a broad study.

In the context of this hearing today, two aspects of that study, I think, have relevance. Those aspects which focused on agriculture and ranching, and the aspects which focused on tourism. Permit me to review, or, to select some excerpts from the SRI study as they relate to these two industries.

SRI, after reviewing the history of agriculture in Wyoming, and admittedly presenting some data which some members of the agricultural community took exception to. Nevertheless, summarized the plight of agriculture, which was obvious to all, that a crisis exists. It's obvious agriculture is severely constrained, externally because of market conditions and internally because of some ill financial help and limited opportunities. Yet the national problem is not in all areas of agriculture, nor is Wyoming agriculture bereft of opportunities. There are very good reasons for Wyoming to reexamine its agriculture industry and to develop new opportunities.

The report moved forward to suggest long-term opportunities which had to do with crops and markets, and then some short-term solutions or suggestions. The short-term suggestions are relevant to this hearing.

Over the short term SRI said:

> Many of Wyoming's farmers and ranchers need to generate revenue quickly. They should consider taking bold steps to use their land in different ways. Opportunities exist for linking agricultural land to the market served by Wyoming's travel and tourism industry. Some are already considering using their land as hunting preserves or special camps for everything from wildlife photography to old fashioned dude ranching. These and similar opportunities should be carefully examined, relying in part on the expertise of Wyoming's travel and tourism industry.

SRI's report on tourism pointed out that this was the area in the State over which the citizens of the State had the most control, and which had the opportunity for the most growth of all of the aspects which affect the quality of life in the State.

The report, though, did bring out what is obvious here, that constraint involves land use policy and access constraints. Increasingly, different levels of government, different governmental agencies, special private interests, vie for rights, uses of and access to Wyoming land. It emphasized there must be a sought, negotiated settlement of land use and access use, which is vital to the solution. It did point out that addressing such complex matters will never be easy. Not only are the legal aspects complicated, the emotional value laden aspect of land use have deep, deep historical roots that make rational argument difficult. Nevertheless, Wyoming must take steps to minimize conflict.

Of the seven roundtables, four addressed this issue.

The roundtable on agriculture and ranching; among the 26 recommendations eminating from this roundtable, emphasis was we must develop a strategy plan for unity among all resource users in the State.

The tourism roundtable, among 20 recommendations emphasized that the State ranchers and farmers were integral to the discussion of the tourism recommendations, as was access to the Federal lands.

The community small business development roundtable emphasized the desirability of formulating cooperative ventures in agriculture, marketing, and guide services in hunting and fishing.

And the nonprofit resource use organizations—that is, wildlife, environmentalists—roundtable, made 16 recommendations, including the assertion that there was a win-win solution for everyone if we could get together at the table.

The Futures Project Center commends this hearing that's being held in the spirit of the philosophy of the Futures Project, which does emphasize that we must bring all parties to the table, and that collaboration is the first step toward resolving these concerns.

Thank you.

[The prepared statement of Dr. Thomas follows:]

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HEARING TESTIMONY
to
THE HONORABLE MALCOLM WALLOP, U.S. SENATOR

Rock Springs, WY
March 15, 1986

Presented by: DR. ROBERT H. THOMAS, PRESIDENT
UCROSS FOUNDATION
UCROSS, WY

Representing: THE WYOMING FUTURES PROJECT

Senator Wallop and fellow citizens of Wyoming, thank you for the opportunity to address the subject of this hearing on behalf of the Ucross Foundation and its sponsored Wyoming Futures Project. Some background about the Foundation may be enlightening. The Foundation is barely three years old, located in the small village of Ucross in northeastern Wyoming at the renovated headquarters of the historic Pratt and Farris Ranch where the Clear Creek and the Piney Creek come together to form the Clear Fork of the Powder River. The Foundation is a non-profit, tax-deductible educational institution whose general mission embraces two main thrusts: (1) It sponsors an Artist/Scholar-in-Residence Program, currently providing food, housing and work space for artists and writers who are selected competitively to spend between two weeks and two months at the serene, isolated setting of the Foundation; (2) The second part of the Foundation's mission is to provide a setting for conferences and retreats, whereby groups from diverse backgrounds may come together to discuss and create ideas which will benefit the citizens of the region.

It is in the context of the second focus of the mission that late in 1984, the Foundation approached Governor Herschler proposing to sponsor an in-depth review of the major factors in this lovely state which directly impact the futures of the quality of life in Wyoming. With the support of the Governor and the 1985 Legislature, which provided $100,000 toward this end, the Foundation set about to raise matching private funds, ultimately tripling the state funds, to accomplish the Project.

The first phase of the Project developed research or input about the state from three major sources: (1) SRI International of California, one of the worlds most prestigious research firms, was commissioned to gather data and to interview the citizenry of the state from border to border and report its analysis and recommendations; (2) The Foundation at its Ucross setting conducted seven Roundtables over a two month period in early Fall of 1985 to explore in-depth citizen response to perceived needs and solutions for Wyoming's futures, and to demonstrate the principle of collaborative problem solving in addressing concerns for the common good; (3) In a State-Wide Meeting on October 19, 1985, 1,000 citizens gathered at the Casper Events Center to hear reports from SRI International and the Roundtables, and were challenged in turn give their own response.

Those present at that state-wide meeting reported back concern for action across the state in looking to the years ahead, focusing pointedly on areas such as tourism, the development of small entreprenuerial business enterprises, communication and transportation, agriculture and ranching, the role of education, and governance structures.

The purpose of this hearing today tends to focus on portions of two segments of all three informational resources sponsored by the Wyoming Futures Project: agriculture/ranching and tourism. The undergirding philosophy of the Futures presentations from the inception of the Project was that "lasting and meaningful solutions to common concerns emanate from the practice of collaboration, whether between the public and private sector; between labor and management; among differing political ideologies; between federal, state and community governance; or between extractive industries and environmentalists."

Permit me to review, then, the relevant parts of the Futures Project presentations which seem appropriate to the purpose of this hearing.

SRI REPORT

AGRICULTURE

The SRI Report briefly reviewed a history of ranching/agriculture in Wyoming, noting that "agriculture has been the heart and soul of Wyoming society, if not the economy". The report noted realistically that "Wyoming today is an important but not a significant player in the nation's agriculture industry. While it ranks among the top five of all states in overall sheep, wool and wool related production and ninth in crops like sugar beets and beans, these are agricultural products in decline. In cattle ranching the state is 22nd in beef cows produced and 31st in total cattle on the land." SRI noted that in 1983 the number of farms and ranches had stabilized to 9,200 of an average size of 3,800 acres, further noting that since 1920 the number of farms and ranches had declined by almost 50%.

In quoting some statistics which emerged as controversial in the final SRI Report, and to which some in the agricultural community took exception, SRI's studies revealed alarming declines in the economic impact of agriculture in the state. For example:

	1974	1983	COMMENTS
Farm Income	$110 Million	$40 Million	Farm income peaked in 1979 at $140 Million.
Agricultural Employment	9% of State	5% of State	The number employed in agriculture has remained constant at about 16,000 workers, peaking at 17,000 in 1979.
Gross State Product	3% of State	2% of State	Agriculture peaked at 5% of the gross state product in 1975.
Farm Loans	$20,000,000	$130,000,000	

SRI summarized the plight of agriculture as follows: "A crisis exists: it is obvious that agriculture is severly constrained, externally because of market conditions and internally because of some ill financial help and limited opportunities. Yet the national problem is not in all areas of agriculture nor is Wyoming agriculture bereft of opportunities. There are very good reasons for Wyoming to re-examine its agriculture industry and developed new opportunities."

In general terms, SRI then made the following relevant (to this hearing) suggestions: "Over the short term, . . . many of Wyoming's farmers and ranchers need to generate revenue quickly. They should consider taking bold steps to use their land in different ways. Opportunities exist for linking agricultural land to the market served by Wyoming's travel and tourism industry. Some are already considering using their land as hunting preserves or for special camps for everything from wildlife photography to old fashioned dude ranching. These, and similar opportunities should be carefully examined, relying in part on the expertise of Wyoming's travel and tourism industry.

The SRI Report on agriculture concludes: "To initiate creative problem solving, Wyoming should draw together agricultural operators, researchers, and experts from other fields to form a task force on the future of Wyoming agriculture. This group should examine creative alternatives, search for new market niches, suggests state policy and research support requirements, and work to move Wyoming toward a more prosperous future. In short, Wyoming agriculture must increasingly sell its creativity and innovation, not its traditional products and old practices."

TOURISM

It may be significant that the SRI Report followed agriculture with its analysis and recommendations for the tourism industry. The report pointed out that "Wyoming offers a set of increasingly rare environmental commodities: wide open spaces, unusual wildlife, and clean air. Like oil and coal, these natural resources are economic assets. They are also important factors in Wyoming's high quality of life which makes them exceedingly important to Wyoming's future." The report points out, that "Wyoming can have a vibrant travel, recreation and tourism industry and a high quality of life." This is a "clean" industry and therefore much in keeping with Wyoming's values. This industry can generate real net wealth for the state by drawing financial resources from other less scenic and environmentally rich states and do so without consuming natural resources or damaging the environment. Although seasonal, the seasons, can be broadened. Simply stated, "This industry can have significant economic and cultural advantages for Wyoming - it must be further developed."

The report critiqued the travel industry in pointing out that it ". . . is a fragmented industry having broad economic effects. Because of this, its impact is difficult to measure. The U.S. Travel Data Center, the only national organization engaged in measuring the impact of travel on state economies, has assessed the impact of travel and tourism on the Wyoming economy. Travelers spent $700 million in Wyoming in 1982, up from $529 million in 1978. Travel - generated tax revenues increased from $17.7 million in 1978 to $20 million in 1982. . . . The Wyoming State Planning Coordinator's Office reports the state and local governments received $31 million in travel generated revenue in 1983.

This industry is also an important job producer. Nationally about 7% of all employment is in travel, recreation or is tourism-related. U.S. Travel Data Center estimated that about 20,000 Wyoming residents were employeed in the broadly defined travel business (nearly half in restaurants), about 9% of the state's non-agricultural employment.

SRI pointed out that "recent national data showed that tourist now travel to fewer destinations while on vacation and spend less money when they arrive. Pressed by the constraints of time and money, travelers have begun to take advantage of "packaged"

vacations that include the cost of travel to and from the destination, accommodations, and other incentives such as discounts on entertainment. This shift is especially important to the state's tourism industry, because Wyoming has been a state where people visited on their own and did what they wanted; the industry has provided a minimum of structure.
The average state travel budget now stands at $3.8 million, an all time high. Wyoming's is $2.7 million dollars in fiscal year 1986.

The report emphasizes that a serious "constraint involves land use policies and access constraints. Increasingly, different levels of government, different government agencies, and special private interest vie for rights, uses of, and access to Wyoming land. There are differences in land-use and access opinions between ranchers and sportsmen and between the public and the federal government. This latter set of tensions, particularly with regard to federal agencies building roads into the back country, is an especially serious problem and must be dealt with through collaboration and negotiation.

In suggesting creative solutions, the report continues, "it is especially important that Wyoming look for ways to build on its unique history and culture. For example, Wyoming should look into experiences in other states and other countries where people pay premium prices to participate in a week's wagon train trip along an old pioneer route, or to learn to drive a stagecoach, or to learn how to restore, take care of and operate a steam locomotive. Festivals are increasingly popular. A festival honoring a world wide hero like Buffalo Bill Cody should be seriously considered. Finally, the public shows increased interest and understanding and experiencing farm ranch life. Travel agents have already had success in contracting with owners of farms and ranches around the country to provide individuals and families the opportunity to turn their vacations into a valuable learning experience."

Conclusion: There are new kinds of travel experiences and services being demanded today. "As with agriculture, there is a need for more creativity and innovation." Again, SRI emphasized that "seeking negotiated settlements of land use and access issues is vital". The report points out that "addressing such complex matters will never be easy. Not only are the legal aspects complicated, the emotional, value-laden aspects of land use have deep historical roots that make rational argument difficult. Nevertheless, Wyoming must take steps to minimize conflict.

SRI strongly emphasizes that perhaps no other industry of the state is subject to growth and control as a result of the creative input of the state's citizenry as is tourism. The report cautions that "leaders should be guided by the notion that what is right for Wyoming is right for all travelers, recreationalists and tourists. This means that the state should not have to compromise its values or preferences to have a vibrant travel, recreation and tourism industry - investments for tourists can be investments in higher quality of life for all residents. The state's Travel Commission captures some of this idea in its excellent slogan, "Wyoming is what America was".

ROUNDTABLES

Seven Roundtables conducted at Ucross were comprised of a wide cross-section of leaders. The Roundtables were reflective of experience and creative ideas coming from concerned citizens of the state, rather than of focused research review and analysis. No "experts" spoke at the Roundtables, and all information and interaction generated from small groups. The Roundtables averaged 28 participants, and were conducted for 1½ days.

Four of the Roundtables made explicit recommendations which have relevance to the purposes of this hearing:

AGRICULTURE/RANCHING:

Among the 26 recommendations emanating from this Roundtable, there was a strong statement that Wyoming must develop a strategy plan for unity among all resource users in the state.

TOURISM:

Among the 20 specific recommendations made by this group, an emphasis echoed the SRI recommendation that packaged vacation experiences must be developed, and a centralized reservation/information system created to serve them. The State's ranches and farms were integral to the discussion of this recommendation, as was access to the federal lands.

COMMUNITY/SMALL BUSINESS DEVELOPMENT:

Interestingly, this Roundtable focused almost as much on tourism as did the Tourism Roundtable. Among its recommendations it emphasized the need to clarify policies on access to public lands and the state land use policy. Another recommendation stressed the desirability to formulate cooperative ventures in agricultural marketing and guide services in hunting and fishing.

NON-PROFIT RESOURCE USE ORGANIZATIONS (ENVIRONMENTALISTS):

Among the 16 specific recommendations which came from this Roundtable, the constructive use and access of the state's natural resources was stressed.

The group emphasized that a non-consumptive use of wildlife and scenery in the state was a win-win situation for everyone. The Roundtable participants pointed out that there are four seasons in Wyoming providing a variety of recreational opportunities (hunting, fishing, winter sports, dude ranching, etc.) and finally, in sympathy with the agricultural community, the Roundtable encouraged the exploration and formation of commercial game farm operations.

Senator Wallop, the Ucross Foundation and the Wyoming Futures Project is not, as a matter of policy, pro-active with respect to public policy issues. The Foundation exists as a facilitator and a convenor to bring diverse elements to the table and seek solutions which are beneficial to all.
The analysis and the recommendations of SRI followed by the recommendations of the Roundtables were generally and roundly endorsed by those at the State-Wide Meeting at Casper in October. The mandate in response was for the Futures Project to continue its philosophical thrust, and proceed to formulate six state-wide task forces to research and promote specific, positive, constructive action. The Project is currently embarking on the first two of those task forces: Tourism, and Barriers to Doing Business in Wyoming. Future efforts are on line to address capital formation, communication and transportation, agriculture and ranching, and the structure of state government.

I applaud your leadership and the efforts of your staff reflected by this hearing today. You certainly are aggressively exploring a creative, thoughtful solution to one of the many concerns that impacts the various futures of this grand state.

Thank you.

RHT/rc

BTCO

Senator WALLOP. Thank you, Bob.

We have Garie Henry sitting in for Larry Bourett of the Wyoming Farm Bureau.

STATEMENT OF GARIE HENRY ON BEHALF OF LARRY BOURETT, WYOMING FARM BUREAU FEDERATION, LARAMIE, WY

Mr. HENRY. I'm Garie Henry, member of the board of directors of the Wyoming Farm Bureau Federation. We appreciate the opportunity to discuss some of the problems associated with access.

This is an emotional issue, but let us look at some facts. Wyoming was settled many years ago. When those settlers or homesteaders came to this State they did so with the understanding that they were acquiring certain rights. The Federal Government knew full well that the land ownership patterns created by railroad grants and homestead laws would result in scattered land ownership patterns. The same rights granted to homesteaders in Wyoming were granted to those in Eastern States. The difference is that the Nation decided at some point in time that further transfer of land to the private sector would be discontinued. The Government decisionmakers knew that problems would occur because of the decision.

We have observed that the Federal Government has been promoting the recreational use of public lands. This practice creates some access problems. Legal problems and questions are beginning to be discussed more and more. Private landowners rights and liability are major items of concern.

For some time the U.S. Forest Service has been issuing recreational use permits to outfitters. The permittee is required to name the Federal Government as an additional insured on the permittee's insurance policy. Outfitters and dude ranchers are likely to see liability coverage demands by the Federal Government raised from the current $300,000 to $500,000 to $1 million. Insurance companies are tending to lower the coverage—at higher rates because of the risk and liability history.

It is becoming more difficult to obtain this type of coverage. The BLM is now beginning to issue recreational use permits. And that Federal agency is, no doubt, also shifting the responsibility to the permittee. The Wyoming law tells us that a landowner who charges for the recreational use of the land is liable—but the Federal Government has found a means to charge for the use of the lands and, at the same time, shift the burden to private enterprise.

Private landowners who might want to engage in outfitting on private lands will likely need liability insurance. That same landowner might have access problems caused by Federal ownership problems. That same landowner might also find himself competing with federally encouraged outfitting on adjacent Federal lands, for which the federally permitted outfitter is paying the liability insurance for the Federal Government. The grazing permittee may not be the same person who has the Federal recreational use permit.

The entanglement of Federal ownership, liability, access and many other issues causes private ownership problems. Can a private landowner controlling hunting pressure on his own lands—can a private landowner control hunting pressure on his own lands only to find that adjacent Federal recreational use has created more or less game than the private landowner wants? Can he compete with the federally operated system which seems to be growing out of recreational use permits? Should the Federal Government promote the recreational use of Federal lands which creates access problems for private landowners, and in some cases even might provide competition for an outfitter oriented landowner?

The Federal Government has seen this coming for well over a century. It is not as though the problem started last week. Ownership patterns are a major part of the problem, aggravated by other practices and policies of the Federal Government. The private landowner must assume responsibility for his lands and be faced with access problems partially created by Federal promotion of recreational use of Federal lands.

We suggest that more recreational use and less conflict would occur if the Federal Government moved to place the Federal lands in private ownership so that proper game management, user management, and liability matters can be addressed. We are getting further from those objectives under the system which has evolved. We will get even further away from those objectives unless the Federal ownership question is resolved.

We have much information on the liability issue, but we have more questions than answers. This issue must be addressed. The access issue is created mainly by the land ownership patterns. Landowners have serious reservations about their liability involved with access, whether they charge or not. The Federal Government surely can see the problem as evidenced by the manner in which recreational use permit liability insurance is handled. Please give private landowners credit for also being concerned.

Public agencies seem to have devised methods by which they can shift the burden to the private sector, and therefore escape all or nearly all of the responsibility. We see licenses being issued but the recipient wants to use our land resource to make use of the license. We see federally encouraged activity. We see privately funded liability insurance being provided for the Federal Government. We seem to be ending up with most of the problems and we shouldn't have to endure those problems.

The Federal Government needs to begin to correct these problems now.

Senator **WALLOP**. Thank you, Garie.

Chris Peterson.

STATEMENT OF CHRIS PETERSON, VICE PRESIDENT, WYOMING WILDLIFE FEDERATION, CHEYENNE, WY

Mr. **PETERSON**. My name is Chris Peterson, and I'm vice president of the Wyoming Wildlife Federation. The federation is Wyoming's oldest and largest organization of sportsmen and outdoor clubs in Wyoming.

The Wyoming Wildlife Federation has been very active during the last several years on public access issues such as Red Rim, Elk Mountain, and sportsmen surveys and hot lines.

Last year we began the process of surveying sportsmen to determine the seriousness and extent of public access problems in Wyoming. We have received more than 1,000 complaints from sportsmen who felt they had been unfairly denied access to public lands. Initial summaries of some of the survey results were given to Senator Wallop, Senator Simpson, and the BLM last year.

I would like to include our survey results which will be submitted later in the record of this hearing.

The surveys indicate that most public land access problems fall within three broad categories. The first category involves illegal closure of accessible lands. Numerous examples of grazing lessees closing accessible public lands were reported in the following areas:

Southeast flank of Bighorn Mountains, northeast Wind River Basin area, Casper BLM district.

Northern and northeastern Shirley Basin area, Casper and Rawlins BLM districts.

Rattlesnake Mountains area, Casper and Rawlins BLM districts.

Copper Mountain area, Rawlins BLM district.

Hoback Creek area, Bridger Teton National Forest.

Pathfinder Reservoir, eastern Ferris Mountains area, Casper and Rawlins BLM districts.

The second category of access problems involves large blocks of public lands that are inaccessibly because they are partially or totally surrounded by private land. Numerous problems of no legal access to public lands were reported in the following areas:

Laramie Mountains area, Medicine Bow National Forest.

Thunder Basin National Grassland.

Southeast flank of Bighorn Mountains, Casper BLM district.

Rattlesnake Mountains area, Casper and Rawlins BLM district.

Western Powder River Basin, Casper BLM district.

The third category of access problems involves several thousand square miles of public lands in the Union Pacific checkerboard that are unaccessible because of the alternating pattern of public and private ownership.

Obtaining public access to public lands in the Union Pacific checkerboard, and to public lands surrounded by deeded land, will require a great deal of ingenuity, patience, time, and money, but the process must be started now. Access can be improved through land exchanges, public road easement acquisitions, and cooperative management agreements. The BLM has moved far too slowly in the past, particularly on land exchanges. I urge ranchers to contact the Wyoming Wildlife Federation if they need help in pushing for a particular land exchange that they believe would be in the best interest of the public.

Demand for outdoor recreation will continue to increase, and more public land will have to be made available to meet this demand. Some day recreational use of public lands in the West may become the dominant and most economical use of those lands.

However, even more imminent is the need to enforce existing Federal laws that guarantee that public lands that have legal public access shall at all times be open to use for prospecting, mineral leasing and mining purposes, access to and egress from other Federal lands, hunting, fishing, recreation, and for all other lawful purposes, without hindrance or interference by the grazing lessee.

This very language is written into grazing leases yet some ranchers continue to insist that their grazing leases give them rights of private property ownership of public lands, and that recreationists are second-class users of public lands. Some of these same ranchers post public lands with no trespassing signs, put chains across country roads, demand trespass fees from lawful users of public lands, threaten to shoot people, and occasionally even get someone arrested and convicted for trespassing on public land.

Troublemakers, whether they are slob hunters or slob ranchers, must be disciplined when they break the law. Federal land management agencies must actively investigate and deal with violations of Federal regulations and lease terms. So far the BLM in Wyoming has failed to do this. The Forest Service has a somewhat better record.

Wyoming sportsmen are about to come face to face with dangerous new proposals for privatization and commercialization of wildlife resources in Wyoming. These proposals to turn wildlife management on private lands, and hunting license sales over to ranchers will increase, not decrease, public land access problems. The "ranching for wildlife" programs, which originated in California and Texas, are designed for large, privately owned blocks of land, and will not work in Wyoming where there is roughly a 50–50 mixture of public and private lands. Due to the highly migratory nature of big game in Wyoming, these wildlife ranchers will quickly realize that to make the wildlife ranching programs work in Wyoming they will also have to take control of the public lands intermixed with and adjacent to their deeded lands. These wildlife ranchers will end up doing everything they possibly can do to prevent a public lands hunter from harvesting one of their buck deer, which would be worth $400 if it was harvested on their adjacent game farm. No trespassing signs will go up on public lands, and country roads will be closed.

We have seen a small sample of this wildlife ranching mentality at Elk Mountain, and witnessed the resultant lockup of public lands and public roads. Wyoming sportsmen must make sure that privatization of wildlife and public lands does not spread across Wyoming.

Thank you.

[Attachment to Mr. Peterson's statement follows:]

Listing of areas with greatest number of public access problems (prioritized by apparently valid complaints of access problems).

1. Union Pacific Checkerboard (Rawlins BLM District): 238 complaints; type C public access problem.
2. SE flank Bighorn Mtns. and NE Wind River Basin (Casper BLM): 93 complaints; type A, B public access problems.
3. Laramie Mountains (Medicine Bow National Forest, Casper BLM, Rawlins BLM): 47 complaints; type A, B public access problems.
4. Northern and NE Shirley Basin (Rawlins BLM): 31 complaints; type A, B public access problems.
5. Thunder Basin National Grassland (Medicine Bow National Forest): 24 complaints; type B public access problem.
6. Rattlesnake Mountains area (Casper and Rawlins BLM District): 24 complaints; type A, B public access problems.
7. Copper Mountain Area (Rawlins BLM): 21 complaints; type A, B public access problems.
8. Hoback Rim/Hoback Creek (Bridger-Teton National Forest): 19 complaints; type B public access problem.

ACCESS PROBLEM TYPES

Type A: Public's right to use public lands, or public roads is denied.

Type B: Mixture of public and private lands prevents access to public land parcels.

Type C: Alternating checkerboard public and private lands greatly restricts access to public lands.

Senator WALLOP. Chris, thank you.

Has Bob Goodman come in? Bob Goodman? Bob Goodman is from the Wyoming Economic Development & Stabilization Board.

Well, we've heard some interesting things and already heard something in conflict. Chris, do you disagree with the statement about what's been going on in the Rock Springs grazing district, over 1 million acres?

Mr. PETERSON. No. You mean as far as the program, how well it's worked with sportsmen and ranchers? No; I agree there are many areas in Wyoming that has been very successful with cooperative agreements between ranchers and sportsmen.

Senator WALLOP. What is the part of the checkerboard you are complaining about, then?

Mr. PETERSON. I would think some of the worse cases probably occur in, oh, the areas southeast, south, and in southwest of Rawlins.

Senator WALLOP. Let's see. Here's the thing that—I'm trying to examine something, not criticize you or anything, because I think it's important to us here. As you talked and identified the several kinds of problems, the first category involves illegal closures of legally accessible public lands, and you identified those. But what definition? Now, we've heard some strong conflict as to what is and what is not legal.

Mr. PETERSON. Those would be primarily accessible by public roads. Those would be Federal, State, and county roads, or adjacent to other public lands.

Senator WALLOP. OK. What about—what about those roads that are generally used by the public but which are not public?

Mr. PETERSON. If those roads run across private lands then they would not be considered legal access.

Senator WALLOP. Done anything about identifying, in amongst your complaint, those things that might be a misunderstanding?

Mr. PETERSON. Yes, probably a considerable number of our complaints were the result of people not knowing where they were or where real access was. But——

Senator WALLOP. I got that because, you know, I mean, I got the letter which you sent us and the survey reports and a lot of it is fairly obvious, that kind of thing, yet it wasn't identified in your report. What I'm saying is, I don't think that adds to the solution of the problem, it adds to the sort of tension that exists between us.

Mr. PETERSON. That report was a very primary version we submitted to you before and that was essentially the raw data we had gathered and we're working on presently to identify where, you know, the actual legal access has been denied.

Senator WALLOP. Well, then you go on and you say trouble makers, whether they are slob hunters or slob ranchers, must be disciplined when they break the law. How—by whom and at whose expense?

Mr. **Peterson**. That would range—I don't know by who, probably to the degree—or, what action they would take, if they pulled a gun on someone or something like that, then it would be attempted assault and that would be handled by the county sheriff's office. If it was other forms of denial of access such as, say, posting "no trespass" signs on BLM lands, then it would be the responsibility of the administering agency, the BLM, to make sure those signs were taken down.

Senator **Wallop**. But that's certainly half of what you identify as the problem. What about slob hunters?

Mr. **Peterson**. Slob hunters are a problem. I think we all agree to that. The federation certainly does not condone any kind of slob hunter activities, and I believe that most of our membership would readily report any kind of slob hunter activity.

Senator **Wallop**. You see, what I'm trying to get at is at whose expense? You know, we had Hillary Oden and Stan Tixier, who basically said that it was the lessees' obligation to maintain the fences, maintain the quality of the forage and maintain the cleanliness and the general condition of the lease. Part of that would be how do you keep slob hunters from doing what they do? And you're talking about them being disciplined. Who is to discipline, the land——

Mr. **Peterson**. I think there are a considerable number of various law enforcement officials that are out in force during hunting seasons. Those would include game and fish officers, rural deputies for various sheriff's departments, and some branding inspectors. Now, I think there's considerable law enforcement people out there and it's a matter of just reporting problems and reporting individuals that create these problems.

Senator **Wallop**. But that generally means that you, as the responsible land operator, whether owner or leaseholder or permit holder, would have to be present and will have to be able to identify who has done these things.

Do you see what I mean? What I'm saying is there's a real burden here that is not being addressed by the kind of thing that you brought down here. And my point is this, you have two groups intentions in some places, some places they're not, but where they are in tension, it seems to me you have to find the means of solving the problems that make that tension exist.

One of the ways of doing that is to, one, lessen the liability, the responsibility and the sort of irritability factors which affect the responsible landowner. That is done partly by training or education of those who come in and partly by providing sufficient control mechanisms to eliminate them, but as well, is it not, or could it not be, partly, by developing some sort of cooperative arrangement between the game and fish department, Wyoming Wildlife Federation, if you will, landowners and sportsmen groups, so that there is not a burden which, when confronted by a landowner who is having otherwise a humongus pile of trouble, especially in this day and age, should be willing to shoulder another one. It's either a lose-lose or a win-win situation. There is no middle ground. And there is no—there is no win for one side in this.

That's what the purpose of all of this is about. So when with we come down and see that the ranching for wildlife program which originated in California and Texas won't work here, that's probably true as they are defined there, but it need not be true in its entirety when you look at how you could get the cooperation. We heard testimony from Larry Kruckenberg that it's going to cost an extra one-half of 1 million bucks to develop these habitats and other kinds of things. Why not have the landowner, the permitholder, why not explore some way to find out how to make him the one who does the enhancement of habitat and raising of game populations in exchange for some cooperative level for his income?

One, you stop spending public dollars to achieve a very public purpose, get it paid for, and still there's nothing to say that you can't find the means by which you have increased the public access and increased private participation, if you do it right. I think that's what we're trying to examine in the recreation thing.

For example, not related to hunting, related to special use permits of a sheep camp, which the Forest Service will say is for the purpose of a sheep camp, it is therefore a sort of denied access of a recreation opportunity and somebody that owns that sheep camp or has a special use permit on it is unable to provide access at some fee at sometimes during the year for the public to use it, some member of the public's use on it. You have two things, you have an enhanced opportunity for recreation, and you have an enhanced income for the person who owns that. Nobody's interest is not served by that. Would you agree or not agree?

Mr. **Peterson**. To some of the things you said, I would agree, particularly in working out some kind of agreement in which the rancher might play a role in improving wildlife habitats, but I think our problem would potentially arise in who would be managing the wildlife. Would that responsibility remain with the game and fish department or would it be turned over to ranchers?

Senator **Wallop**. Even in the California one, which you criticize, before anything like that takes place you would have a cooperative agreement that is signed between the game and fish department and the landholder for its operators before anything can take place. There's no reason to suppose you would abandon responsibility when you are—when you were trying to enhance a resource that is related to public and private lands. There's really not.

I mean—what I'm trying to do is have us not look at all the things we cannot do but look at the variety of things we might be able to to do to increase. This is a time when Wyoming—because of a variety of things, lower oil prices and great unemployment and economic stress—has less money to spend than it did just a few years back. This is a time, because there's huge Federal deficits, the Federal Government has less money to put into these land managing agencies than it did a few years back. We can go away and say the problem will take care of itself and things will get better and we can find a way to make everybody who's involved with this thing come out something of a winner. Maybe it doesn't exist, but I don't think we ought to start by saying there is no way in which we can enter into that.

Mr. **Peterson**. You speak of some other variations that sound somewhat different than the California or Texas programs.

Senator WALLOP. Nobody is saying Wyoming has to be California. What we're trying to say is there are things that people do in other States that have elements of truth for us.

Mr. PETERSON. How would you deal with the highly mobile nature or migratory nature of our wildlife? And if you—I assume you're just calling for this on private land. If you had adjacent public and private lands and, essentially, a wildlife herd moving back and forth, how would that work? Charge $400 to hunt buck deer on the private land and immediately across the fence hunters would be hunting for less than $20 for a license?

Senator WALLOP. Same way it does today, as a matter of fact. I mean, it's unrealistic to suppose it doesn't happen now. What you would be trying to find is some sort of cooperative arrangement whereby both the game and fish managers and the wildlife management would end up with something a little more than what they presently have. Why should we spend half a million dollars of tax payer's money, or license money, which otherwise could be used in the game and fish or other things, if there is the means by which you can both expand the habitat and the population and thereby increase both public access and private income?

Mr. PETERSON. There may be some way to do that, but after speaking with a representative of the California Fish and Wildlife Department, he was very explicit in indicating their program, and what he was aware of, of the Texas program, would not work in a place like Wyoming which had a high mixture of public and private lands.

Senator WALLOP. When you're saying a place like Wyoming that is like saying a place like America. One of the hard things we have in Washington is dealing with formulas that go from border to border, or the border policy for Florida is not a border policy for Wyoming.

To say there is no way at any place, at any level in Wyoming where the land patterns are significantly different, even within a public land place, is to say, let's not examine anything. And I think what I'm trying to suggest we do, in line with what the Futures Project has suggested, John Hay has said the ways that work down here in the million acres of the Rock Springs Grazing District, which Garie Henry has said, you know, the tensions and needs that exist within the land holding community, the only loser, if we don't do anything, is the very wildlife resource everybody seeks to protect.

Mr. PETERSON. It seems currently Wyoming is doing a very—very well in managing its wildlife. The problem is public access at this time, wouldn't you agree?

Senator WALLOP. No; I don't agree they are not doing a good job, but I don't agree that the only problem that exists is public access, by any stretch of the imagination. Again, go back and say—I just cast this out anyway. Why, when you are strapped to the bone by new economic circumstances that are beyond your control, are you going to spend any of your time maintaining wildlife population that is in conflict with the rest of your income source? I mean, how can you expect somebody to do that? And who suffers out of that? You see, it's the wildlife resource. That seems to be the side called lose-lose.

Mr. PETERSON. But Senator, what prevents the landowner at present from making a profit off the wildlife that does graze on his land through access charges to his private lands, through outfitting operations? I mean, what's to prevent him from making profit now and subsidizing his operations without actually turning over the management of wildlife to——

Senator WALLOP. Nobody is suggesting turning over the management. That's the single key which is wrong in this dialog. There has been no suggestion that anybody turn over the wildlife management.

Mr. PETERSON. There is a——

Senator WALLOP. There is a suggestion that, through cooperative agreements, that you can get people who own property which is potentially prime habitat, to do more about making it more prime, supporting a greater population, in exchange for certain other things. And let me suggest that it is conceivable that we could examine, and I don't say embrace, but examine, what would happen in these grazing allotments if, in exchange for a reduction in the animal unit size of the allotment, there was a commitment by the land—by the permittee to do some real enhancement of wildlife population and habitat, and a cooperative agreement between land management agencies and fish and game and wildlife and the operator. Everybody's into the game. And the ultimate goal is to have more of whatever it is that is dependent upon this habitat. Why, in exchange for perhaps a slightly higher fee and a reduced animal unit, then, would it not be possible for us to make some recreational income available to that rancher?

Mr. PETERSON. I think that would be possible under the current framework of laws and our current present system, wouldn't you agree?

Senator WALLOP. No; I wouldn't agree. Plainly not, because even in this testimony comes—listen, I'm—we're dominating this panel and I don't mean to be. I want you to jump in here because it's a discussion about potentials of dealing with the problem.

You're in here talking about both closures and charges on public lands. There would be, might be some circumstances where an exchange for opening a whole lot you might permit a small amount to close.

Mr. PETERSON. Yes; under cooperative management agreements, I think that would be.

Senator WALLOP. That's the kind of thing—what I'm trying to do is get the institutions in conflict to find the areas of common ground with each other rather than to exacerbate the conflicts.

Mr. PETERSON. I think, as I pointed out in my comments, the Wildlife Federation would be very favorable toward cooperative management agreements.

Senator WALLOP. Again, even in the areas of things other than wildlife, because that seems to be one of the things, folks, that's quite naturally what Wyoming has in many respects to offer, at least in its own mind, but, Bob Thomas, what about that in terms of just photography, hiking, camping, day trips, nature trails, bed and breakfast, all those kind of things, you know, wouldn't there be something in there as well to enhance that?

Dr. **Thomas**. The tourist recreation industry has pointed out people are looking for—they're not going as far, they're not spending as much money when they get there, and they're looking for packaged opportunities. And it seems to me that one of the possibilities that's been suggested is that farmers and ranchers have every—have a wide open door at this point to market bed and breakfast opportunities, tours, experiences on the ranch as well as visual viewing of habitat from the glades, photography——

Senator **Wallop**. Let me ask you this, did they examine—or, do you think it is worth examining how that might be combined with opportunities to use that as special use permits within public lands that are otherwise used primarily for grazing purposes? Wouldn't you think we ought to try to find the means within the BLM or the Forest Service to come to some kind of agreement with these people where the public's access is enhanced slightly by the ability to use the special use permit for more than one use?

Dr. **Thomas**. Well, the recommendations didn't examine that particularly, or specifically, but the recommendations are that a task force be formed that brings all these players to the table and look for win-win circumstances and solutions. The theory that all the ships rise with the tide is a very important theory in terms of what's facing Wyoming in the coming years.

Senator **Wallop**. I want to thank the panel. Garie, do you have——

Mr. **Henry**. Mr. Senator, I got one comment to make on the situations that the Ucross Foundation has brought up, or the SRI study. More specifically, these ideas that SRI came out with to help the agriculturist improve his lot, so to speak.

Was there any consideration given to those as to how many—I mean, what the cost of setting up a dude ranch or what a bed and breakfast or similar situation to that might be in just getting permits, the necessary permits for all of these different items, such as your clean drinking water, your sanitary facilities, your public health, for cooking?

Dr. **Thomas**. No; the study did not pretend to get into the specifics of the broad suggestions. The study did recommend, as I indicated, that in the next phase task forces be formed to look in depth at the ways to accomplish some of these recommendations, or if the recommendations were indeed valid. That's where the Futures Project is going in its next step. There are six task forces that are on line. The tourism task force meets in a formation next week and agriculture will be a few months behind.

Senator **Wallop**. That's a really good point. That's one reason I'm sorry Bob Goodman wasn't able to get here, from the Wyoming Economic Development and Stabilization Board, because none of these things can happen overnight, none of them can happen without a very big effort on the part of State governments to understand what is necessary to make some of them come about.

I think there's another point, whether it is a cooperative agreement of the game and fish, not everybody, A, is going to want to. OK? They're going to think that an increased hassle, they don't want to get into it. Not everybody amongst those who want to will be able to, partly because of where their land lies or because of a variety of things, that may be inexperience or circumstances or what have you, and don't do it.

But amongst all the things that go on in Wyoming, there are opportunities that perhaps have not been addressed. Bob Goodman's group is necessary, your group is necessary, the game and fish is necessary, the stock growers are necessary, so too is the BLM and the Forest Service. These are new times and they present us with a tremendous opportunity rather than a tremendous burden. I'd like to come out on the other end with more of the things we trust and believe in rather than less, the less we do is sit and do nothing. There's big problems out there. I demand access. This one is legal access. I just think there are more creative things than that in the box.

Mr. **Peterson**. Senator, I would like to say I think there's a tremendous opportunity for ranchers to supplement their ranching income with wildlife opportunities in the State, but I think that much of that opportunity can be taken advantage of without ranchers playing a different role in wildlife management or licensing.

Senator **Wallop**. Perhaps it can, but it oughtn't to be rejected out of hand as one of the concepts. Nothing should not be on the table when you go to look for all of the conclusions. Having examined them you might want to reject it afterwards, but I would hate to say—there is any one set of things that simply can not be considered in any dimension, there is no opportunity here in Wyoming, because that simply limits us in the horizons we can accept. It seems to me we want to examine everything out there and, you know, the time to be bold is in the front of things, the time to be conservative is after you start choosing. But to say there's no point in thinking about it is to deny us one of the opportunities that may be there. It may not be there, but why not look? Any reason not to?

Mr. **Peterson**. I think that there probably are some limitations that we should not go beyond.

Senator **Wallop**. Who's talking about going when you're on the dreaming side? You're going when you're on the choosing side. This is the time for dreaming now. We've got to get through that before you can get all the things out there to choose amongst. I think for us to be too timid on the front side is to be certain that all the opportunities will not have been examined, and some of the things that might be very good will not have been even thought about.

Mr. **Peterson**. I think panel discussion is covering those opportunities and this is a good start.

Senator **Wallop**. Thank you all very much.

We now have the last panel, which is solutions and recommendations for resolving problems and the recommendations for administrative or legislative change.

That's Hillary Oden, again, from the Bureau of Land Management; Stan Tixier from the Forest Service; Howard Schrinar from the State Land Office, Commissioner of the Wyoming State Land Office; Matt Reid of Wyoming Wildlife Federation; Larry Kruckenberg from the, again, Wyoming Game and Fish Commission; Vern Vivion of Elk Mountain Safari, Inc., and James Magagna of the Wyoming Wool Growers Association, and Carolyn Duncan from from the Hanna Sportsmens Club.

Hillary, we'll begin with you.

STATEMENT OF HILLARY ODEN, STATE DIRECTOR, BUREAU OF LAND MANAGEMENT, CHEYENNE, WY

Mr. **Oden**. Hillary Oden, State director, Bureau of Land Management. I believe there's several approaches that might be used to address access problems. Some of these might require changes or regulations and others just a change in program emphasis.

First, limiting liability on private land. I won't say much more about that—I think it's been discussed at length—except we are also concerned about liability. Right now in the State we have about 4,500 miles of Bureau public land roads we're responsible for, and only able to maintain less than 1,000 miles of those a year. We're concerned we might have to shut some of those down because we are not able to maintain them, and we are concerned about the liability. So I think the liability issue does not need to be addressed.

Another item, cooperative management programs, that's been discussed. We used cooperative programs for a variety of purposes except for livestock grazing. These agreements could be used to gain access to public land and private landowners in return for some service, a bridge, cattle guard, fence, whatever, in exchange for access across private lands. If we did not have the money to provide it, perhaps we could do it through agreement and volunteer services through third parties, which is such as the Atoman ORV Club and other sportsmen associations.

Expand reciprocal right-of-way authority to include all types of right-of-ways. It might be possible to allow parties involved in a reciprocal right-of-way to include other landowners in the agreement, and to include public access as one of the stipulations on the right-of-way. It might have benefits to the private parties in the way of reduced right-of-way fees, additional road maintenance or better signing.

A nationwide public education program, this would be a public affairs program to enhance the public and to educate the public and the landowners on their rights and on restrictions related to access on public lands. The Secretary's project, PRIDE, I believe is an example of this. Among its objectives include development of internal and external awareness and appreciation of public lands and its varied, valuable resources. To continue to improve your land management service to the public to encourage the public lands ethic.

Another one might be to simplify surface exchanges, fee exchanges or trade use agreements. Kind of two distinctly different possibilities. Exchanges could be a permanent solution to access problems or questions in some areas. Our process is complex and sometimes very time consuming. The BLM has had some success in exchanges for mineral values that were not in issue, but if Howard Schrinar and I can find an easy, simple, cheap way of exchanging that we might be able to help in both the access and the land management issue, trade use agreements would allow private landowners to control access in some areas while allowing the Bureau to control access in others. This wouldn't be a permanent solution but might be used in certain situations.

Before this suggestion could be implemented we need to look into the question of authority for us to allow public lands to be closed to public use in some places in exchange for openings in another. We are looking at one particular proposal right now, and discussing it with the private landowner with intermingled lands, and with the Wyoming Game and Fish Commission to see if this would work. The trade use agreement might be used as a temporary action pending formal exchange.

Road identification and signing. This would involve encouraging the declaration of public roads by the counties, and working with the counties so that the county roads provide access to the public lands to the greatest possible extent. Another part of it would be to develop a sign program for the counties and other State and Federal agencies to better identify public roads, and deal as well as on public maps.

Jim Berger mentioned we didn't do too good a job of differentiating between the public roads and private roads on the maps last fall. He and others have brought that to our attention and we're going to try to do better this year, Jim. We'll continue to work closely with other Federal and State agencies, Forest Service, State Game and Fish, State land commissioners as well as the county agencies and private organizations like the Wildlife Federation, Stock Growers Association, in the development of public access planning.

One thing that's been touched on a little bit this morning is, I guess, a multiple-agency hunter access operation respect program. Attempted this on a pilot program with some parties involved last fall in the Rawlins district. We're working on now, this year, in having meetings to see if we can work with the Forest Service, the State land commissioner, also the counties, Wildlife Federation and Stock Growers Association, on a statewide hunter access operation respect program to inform the public as to which roads are open to the public, which are public lands, which are private or State, and which public lands are open to the public, trying to get more standardized and more definitive maps and brochures on this.

This operation respect will be designed to encourage public cooperation for ranchers, respect for property and equipment. Educate the leisure time public about land, livestock and wildlife, and inform the public about the various land ownership throughout the State and teach the do's and don't's when using the land.

Land and water conservation fund is another possibility that might be made for a specific provision for use of land and water conservation funds for acquisition of recreational needs.

And I believe that's a good start, and I'm sure the other panelists will have some other ideas.

Senator **Wallop**. Hillary, thank you.

Stan Tixier.

STATEMENT OF J.S. TIXIER, REGIONAL FORESTER, FOREST SERVICE, DEPARTMENT OF AGRICULTURE, OGDEN, UT

Mr. **Tixier**. Yes, sir. I moved over here. Mr. Chairman, as we address this issue of recommendations for resolving access, public access to public land, let me say that we regard the statutory authority for acquiring forest development access is adequate. We don't need any additional legislation beyond that. It's already been provided by the Congress.

Now, this is not to say that we do not have or do not encounter administrative difficulties in acquiring access and in resolving access problems, we certainly do. Acquisition of road access rights-of-way often involve complicated situations, and solutions are not always easy to achieve. Instead, we believe that there are numerous partial solutions which when taken selectively and applied over periods of time will achieve the desired results.

I want to make one mention of the question of liability which was brought up by the last panel. To clarify a point and digressing just slightly, but to say the liability we require outfitters to carry is to protect the public that they do business with, and to hold the United States harmless from liability. The U.S. Government, the Federal land agency is a self-insurer and so we're not getting a free ride from the liability insurance that we require outfitters to carry. I hope they get that clarified.

Senator WALLOP. I might just make the observation—without taking up your time, yourself considered—but you don't have any problems unless you agree to be sued.

Mr. TIXIER. That's handled through the tort claims.

Senator WALLOP. But that's also handled by Congress. You cannot be sued willy-nilly, you also have to have the permission of the sovereign. It's a situation many landowners would like to achieve.

Mr. TIXIER. That's right.

Getting back to the subject, and pardon me for digressing, the National Forest Management Act of 1976 provides a means for identifying access needs, and also the necessary funding requirements. Individual forest plans, which as you know are being developed now throughout the country, are the basis for establishing specific access and transportation requirements to meet planned resource management objectives.

Now, in some locations construction of roads through cooperative agreements with owners of large acreages, as an example, timberlands, intermingle with national forest lands, has contributed greatly to improved access. In such arrangements the Government retains the right to use the road for all national forest purposes and for the public to use the road as well.

Providing access by trails also offers an important means of providing public access. And in some cases the trails serve as interim access till the road is built. And as I mentioned before, sometimes the trail itself is the most appropriate access to a given piece of remote land.

Again, as I mentioned earlier, the juncture between county roads and forest development roads is where much of our access problems lie. Counties often elect to drop roads from a system due to high maintenance costs, low volume traffic, and when roads are considered to be of minimal value for the citizens. There is a need for agreement, and I would emphasize agreement between local, State, and Federal road officials, on the extent of each entity's responsibilities. The need for county and State participation is high where these roads also serve private lands within national forests.

National forest supervisors have long worked with county officials to resolve problems on a county-by-county basis. Increased awareness by State and local governments of their role and obligations is called for also. There's often a need for more direct contact between organizations interested in improved access, particularly sportsmen, and the Forest Service at the local level.

Discussion of specific access situations is a valuable means of resolving such problems. In a related matter, local sportsmen clubs and other organizations and users of national forests, need to get involved. And we need to get the message across to users of Federal lands that private property owners need to be protected from thoughtless acts that cause inconvenience and often monetary damages to their property. In other words, the good neighbor relationship is something we all need to work toward fostering.

The solution offered here is within the scope of statutory authority, and administrative procedures available to the Forest Service and other agencies. We believe their consideration and implementation aided by this subcommittee's interest, will provide a means to resolve problems to access to public and to private land.

We appreciate the chance to participate.

Senator WALLOP. Thank you very much. Stan.

Howard Schrinar.

STATEMENT OF HOWARD M. SCHRINAR, COMMISSIONER, PUBLIC LANDS AND FARM LOANS, WYOMING STATE LAND OFFICE, CHEYENNE, WY

Mr. SCHRINAR. Thank you, Senator. Instead of a formal statement I'd just like to address five observations I made during the hearing today.

First of all, I think there is definitely a need to increase the amount of information flowing from both the lessees and the users of public lands, especially State lands as to what is access, what you can and cannot do and what is recreation.

And when I talk about what is recreation, I can speak from personal experience, when I get calls from a hunter that says so and so, one of your grazing lessees, would not allow me access to hunt on your State section, and then I call up the grazing lessee and he or she informs me that, we didn't have any problem with him hunting but we had a problem with him taking their Winnebago with a jeep behind it with four ATV's hooked on to the jeep into the State section. So there's a real problem.

And if you look at some TV commercials sometimes, especially the ATV commercials, you see these people, an entire family driving along a scenic river with a beautiful back drop and they are in their Winnebago and they think that's what recreation is, and there seems to be no identification or admission there's some real serious problems that could be caused by that recreation.

I agree with you, Senator, there are solutions that are win-win, and we need to address them. And as far as some of the discussion about people in agriculture not being good wildlife managers, I must say I grew up on a small farm in Fremont County. There's a very nice herd of deer in that agricultural community and I don't know of anybody in agriculture that didn't try to take care of that wildlife. It's kind of like one of the Supreme Court Justices about 25 years ago said he couldn't define pornography but he knew it when he saw it. And while people in agriculture may not be able to develop a very detailed wildlife management plan, I think they do know basically what wildlife means.

Third, I think we need to identify critical areas of access that are of concern to most people and concentrate our efforts. If we dilute our efforts over the wide spectrum, I don't think we're going to accomplish as much as if we concentrate our efforts.

Fourth, I hope none of us overreacts to some of the complaints over access. We never hear about the good experiences people have, or the cooperation that people have between themselves, but we always hear of the problems, and I think we need to recognize that most people in agriculture, and most hunters and fishermen, I think, get along fairly well.

And fifth, Mr. Chairman, I would just like to say like morality, we can't legislate mutual respect, common courtesy or the concern for rights of others. That's going to have to come from all of us as individuals and as groups. What we can do is try to create an atmosphere of cooperation between those various groups, and I personally feel that's possible.

Thank you.

Senator **WALLOP**. All right. Howard, thank you.

Chris, you going to be mad at me?

Mr. **PETERSON**. Yes.

STATEMENT OF CHRIS PETERSON, VICE PRESIDENT, WYOMING WILDLIFE FEDERATION, CHEYENNE, WY

Mr. **PETERSON**. I got lost in transit from Cheyenne.

The wildlife public road easement acquisitions, exchange of public lands for public road easements, which I think is a new idea, we believe that there is a tremendous opportunity to improve public and private land and access through cooperative management agreements. These cooperative agreements that will close some public land in exchange for opening equivalent private lands to recreational use, I think, are a very good idea and will be very useful, especially in the Union Pacific checkerboard area.

We would also like to meet with individual landowners or stockmens organizations to establish a working dialog that would be necessary to solve recreational access problems in Wyoming.

The Federation urges the BLM to speed up their improved map programs, which is exemplified by the surface ownership map which shows public access roads in Natrona County, and we'd like to see these on all the counties in Wyoming that have public lands.

As I pointed out earlier, we support landowners utilization of wildlife resources to help supplement their income, but we still do believe that the game and fish department is the best organization to be managing wildlife on lands throughout the State, and also managing the license sales.

Thank you.

[The prepared statement of Mr. Peterson follows:]

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ENERGY AND NATURAL RESOURCES PUBLIC HEARING
PUBLIC ACCESS
MARCH 15, 1986
ROCK SPRINGS, WYOMING

Testimony presented by Chris Peterson on behalf of the Wyoming Wildlife Federation in response to panel #4 topics: the solutions and recommendations for resolving problems and the recommendations for administrative or legislative change.

The Wyoming Wildlife Federation supports programs to increase public land access through land exchanges, public road easement acquisitions, and exchanges of public lands for public road easements across private lands. We also believe that there is a tremendous opportunity to improve public and private land access through cooperative management agreements. These cooperative management agreements would close some public lands in exchange for opening equivalent private lands to recreational use.

The Federation urges the BLM to attempt to speed up their improved map program which is exemplified by the new surface ownership map that shows public land and all public access roads in Natrona County. These maps are published jointly with individual counties. Disagreements between sportsmen and ranchers over which public lands are legally accessible will be greatly decreased once such maps are available for all counties in Wyoming.

The Federation would like to meet with individual landowners or stockmen organizations to establish the working dialogue that will be necessary to solve recreational access problems in Wyoming.

WORKING TODAY FOR WILDLIFE'S TOMORROW!
Wyoming Affiliate of the National Wildlife Federation

The WWF recognizes that many Wyoming ranchers are currently facing serious financial problems. We believe that there are considerable opportunities for Wyoming ranchers to use wildlife to diversify their sources of income. We support ranchers supplementing, their income with dude ranching, outfitting and guide services, room and board accommodations for hunters, fishermen, and non-consumptive recreationists such as hikers and outdoor photographers. We also do not object to ranchers charging whatever fees the market will bear for recreational use of their private lands, and charging reasonable access fees to cross their private lands to get to public lands. All of these income opportunities are presently available to ranchers without changing current federal laws, Wyoming laws, or current game and fish management regulations or practicies in Wyoming.

However, the Wyoming Wildlife Federation is unalterably opposed to any proposals which will privatize public owned wildlife resources or public lands. Such privatization will in no way improve public access to public lands, or increase recreational opportunities for the general public. Instead privatization will remove outdoor recreation opportunities from the general public, and turn them over to an elite few that are willing and able to pay hundreds or thousands of dollars to "experience" Wyoming. Privatization will not be acceptable to the majority of Wyoming's citizens, and we urge Senator Wallop to not endorse such proposals.

Senator **Wallop**. Larry Kruckenberg.

STATEMENT OF LARRY KRUCKENBERG, CHIEF OF COMMUNICATIONS, WYOMING GAME AND FISH DEPARTMENT, CHEYENNE, WY

Mr. **Kruckenberg**. Thank you, Senator. We do have a couple of pieces of information which I think I'll just throw out because I think it may help put this thing into perspective.

It's already been mentioned before that 50 percent of the State is in public ownership, and based on some work that we did in some parts of the State, about 90 percent of landowners charged some sort of access fee, but in others the fee for hunting is not a problem.

It appears that access fees when they are charged vary, depending upon the species being hunted. Again, that may range from $50 to $20 per day. In a case of a trespass fee, it's as high as $3,000 a season under a lease arrangement.

Statewide, the department has identified, to date, a total of 48 different parcels of public land, 1 square mile or larger, which are inaccessible as a result of access being restricted by surrounding private land. In addition, there are a minimum of 125 miles of stream fishing on public land where access is blocked by private land. The latter represents a loss of approximately 28,000 potential fisherman days and a resulting annual loss of potential income to the State of Wyoming of about $980,000.

There's a minimum of eight lakes and reservoirs on public land where access is blocked by private lands. This amounts to about 436 surface acres, representing, again, about 7,700 fisherman days, and an annual loss of revenue to the State of approximately $270,000.

But in spite of these problems I brought up and discussed here today, we still have a tremendous hunting and fishing here in Wyoming. In the past, landowners have been very tolerant of sportsmen. As a result of their tolerance, the department has been able to do a reasonably good job of providing recreational opportunities for both State residents and nonresidents, but we recognize times are changing. Landowners are more and more reluctant to open their lands to sportsmen. It's been brought about by a number of reasons, including the dire economic straits in which some agriculturists find themselves, the liability question which has been addressed today, and the fact some hunters abuse landowners rights, and in some cases the land itself.

In a recent national survey of wildlife administrators, Wright and Kaiser, have found that 59 percent of these administrators ranked misconduct of hunters as highly significant in property owners decisions to preclude access. The same authors identified a lack of economic incentive as a problem to private landowners as well as their desire to protect their privacy. In this study a surprising result was access problems seem to be the most important in the eyes of wildlife administrators in the mountain States where the vast majority of public land exists. Most likely, this perception of the magnitude of the access problem being a fairly recent occurrence in the West.

The implications of this access problem are both economic and political for wildlife management agencies. Most State wildlife programs depend on license sales and other sportsmen generated revenues as their primary source of funding. As the opportunity for hunting declines, so will the hunter numbers and subsequently the wildlife revenues. With the loss of hunter numbers, agencies will lose political support for wildlife programs. To prevent this problem an effort must be made to address these issues. Agencies must attempt to minimize hunter misconduct, one of the primary focuses of this department's public information and education efforts.

Education efforts must also involve the landowners and to help in that process this department recently initiated a landowner newsletter. We undoubtedly can do more in the way of providing technical advice, damage control supplies, and other wildlife habitat management materials. It's entirely possible that other, more imaginative efforts such as property tax relief, income tax relief, and liability and property loss insurance may have merit.

Regardless of the solutions that are apparent, it is imperative that we retain the ability to maintain big game populations; cooperation with a variety of landowners has been necessary in the past, and will continue to be necessary in the future.

Reasonable trespass fees or access fees across private land to public land can provide the private landowners with a significant source of income based on wildlife associated recreation. Landowners may want to provide additional services to sportsmen as well as individuals who want to enjoy the out of doors. Excess trespass fees or total exclusion of the public from public and private lands, however, will result in significant management problems for big game populations, as well as a significant loss of recreation and revenue to the residents of the State of Wyoming.

Hopefully, innovative ideas of access through and to private land to enjoy wildlife associated recreation can be developed in the West.

We believe that the solution to the access problem lies in six areas: One, for ranch compensation. That is paying the landowner for forage that is consumed by wildlife animals so as not to jeopardize their legitimate livestock operations; two, that the liability question be resolved; three, that we continue and expand educational efforts of both the recreational user and the landowners; four, that landowners be allowed to charge a reasonable trespass fee for hunting on private land, or if need be, access to public land under the guise that all of us must recognize there are no more free rides; five, that landowners under the existing system look toward providing more services not only to the consumptive public, that is the hunters and fishermen, but also they expand, as the Futures Project identified, into the nonconsumptive arena of wildlife photography, wildlife viewing, and things of that nature; and sixth, and finally, that we maintain wildlife as a public resource.

On behalf of the Department, Senator, thank you.

[The prepared statement of Mr. Kruckenberg follows:]

Larry Kruckenberg

PANEL FOUR:

The Solutions and Recommendations for Resolving Problems and the Recommendation for Administrative or Legislative Change:

Before discussing any potential solutions, I think I should make some effort to identify the problem. Approximately 50 percent of Wyoming is public land, managed by state and federal government. The other half of the state is in private ownership. Some landowners charge no access fee to their land or fee to cross their land to reach public land. However, in some parts of Wyoming, up to 90 percent of the landowners charge some form of access fee. In all parts of the state, a few landowners deny access for hunting. Up to 75 percent of the landowners in local areas may deny access to sportsmen.

When access fees are charged, the price varies depending upon the species being hunted. Again, some landowners do not charge access fees, but for those who do the price ranges from $15 to $20 per day to as high as $3,000.00 for a season.

Statewide the Department has identified, to date, a total of 48 different parcels of public land one square mile or larger which are inaccessible as a result of access being restricted by surrounding private land. In addition, there are a minimum of 125 miles of stream fishing on public land where access is blocked by private lands. The latter represents a loss of 28,267 potential fisherman days and a resulting annual loss of potential income of $981,995.00 to the state of Wyoming. There are a minimum of eight lakes and reservoirs on public lands where access is blocked by private lands. This amounts to 436 surface acres representing a potential opportunity of 7,760 fisherman days and an annual loss of revenue to the state of approximately $270,000.00.

The Department has also experienced some difficulty with obtaining access to our habitat units. Prior to the passage of P.L. 94-579, the Federal Land Policy and Management Act of 1976 (FLMPA), there were no consistent federal policies for granting rights-of-way across public lands. Because the Department did not have the power of eminent domain to condemn a right-of-way, we entered into a myriad of agreements, special use permits and memorandums of understanding to secure access rights. These types of documents were never intended to specifically address rights-of-way, but this was the only avenue open to the Department. In addition, and again due to the lack of defined federal regulations, we acquired fee title rights to certain tracts of public lands in order to facilitate access using the Recreation and Public Purposes Act. FLPMA now provides for authorization and guidelines to secure rights-of-way across federal lands. As a result, we haven't had too many problems in securing public access to federal land that would affect our fishing access program.

In spite of these problems, hunting and fishing in Wyoming is exceptional. In the past, landowners have been very tolerant of sportsmen. As a result of their tolerance, the Department has been able to do a reasonably good job of providing recreational opportunities for state residents, as well as nonresidents. Times are changing, however.

Landowners are more and more reluctant to open their lands to sportsmen. This has been brought about by a number of reasons, including the dire economic straits in which some agriculturists find themselves and the fact that some hunters abuse landowners rights and the land itself.

In a recent national survey of wildlife agency administrators, Wright and Kaiser (Wildlife Society Bulletin 14(1) 1986) found that 59 percent of these administrators ranked misconduct of hunters as highly significant in property owners decisions to preclude access. These same authors identified a lack of economic incentive as a problem to private landowners as well as a desire to protect their privacy. In this study, a surprising result was that access problems seemed to be most important in the eyes of wildlife administrators in the mountain states where the vast majority of the public land exists. Most likely, this perception of the magnitude of the problem is a result of the access problem being a fairly recent occurrence in the West.

The implications of this access problem are both economic and political for wildlife management agencies. Most state wildlife programs depend on license sales and other sportsmen generated revenues as their primary source of funding. As the opportunity for hunting declines, so will the hunter numbers and subsequently the wildlife revenues. With the loss of hunter numbers, agencies will also lose political support for wildlife programs. To prevent this problem, an effort must be made to address these issues. Agencies must attempt to minimize hunter misconduct, one of the primary focuses of this Department's public information and education efforts. Education efforts must also involve the landowners and help in that process this Department recently initiated a landowner newsletter. We undoubtedly can do more in the area of providing technical advice, damage control supplies, and other wildlife habitat management materials. It is entirely possible that other, more, imaginative efforts such as property tax relief, income tax relief, and liability and property loss insurance may have merit. Regardless of the solutions, it is imperative that we retain the ability to manage big game populations; cooperation with a variety of landowners has been necessary in the past and will continue to be necessary in the future. Reasonable trespass fees or access fees across private land to public land can provide the private landowners with a significant source of income based on wildlife associated recreation. Landowners may want to provide additional services to sportsmen as well as individuals who want to enjoy the out-of-doors. Excess trespass fees or total exclusion of the public from public and private lands, however, will result in significant management problems for big game populations, as well as a significant loss of recreation and revenue to the residents of the State of Wyoming.

Hopefully, innovative ideas of access through and to private land to enjoy wildlife associated recreation can be developed in the West. It is this Departments' sincere desire that any solutions which are arrived at maintain the integrity of wildlife as a public resource. If the Game and Fish Department can be of assistance in any further deliberations by your subcommittee, please feel free to call upon us.

Thank you.

Senator WALLOP. Thank you, Larry. Thank you, thank you very much.

Vern. Vern Vivion.

STATEMENT OF VERN VIVION, ON BEHALF OF ELK MOUNTAIN SAFARI, SARATOGA, WY

Mr. VIVION. Mr. Chairman—Senator Wallop, members of the Committee on Energy and Natural Resources, I am pleased to have the opportunity to give you information concerning our program of holistic ranching management which we have called Elk Mountain Safari.

Why Elk Mountain Safari? The reason Elk Mountain Safari was organized can best be summarized in words written by Walk Gasson, staff biologist for the Wyoming Game and Fish Department, when he wrote for the 50th anniversary of Wyoming Wildlife, January 1986. Referring to the boom times that overtook Wyoming, he stated:

> People are moving to Wyoming as if it were the promised land. For many it was. They became the hunters, fisherman, photographers, and general wildlife enthusiasts who would spend their new found prosperity on reveling in the wildlife paradise they had found. Others began enjoying it in their own way, by setting out to exploit it in any way they could. They shot antelope on the way to work to see if their rifles were sighted in, they gouged twin ruts across the desert "playing" with their four-wheel drives. They dumped crude oil in the streams and left their beer cans in piles of silent tribute to their mindless rape of the land.

This is the motivation that prompted four Saratoga Valley ranchers to put their lands and money together in order to form Elk Mountain Safari. We proudly announced to the public that that "we have removed all No Trespassing, No Hunting, No Fishing, No Camping" signs and invited all and any to enjoy careful use of our private lands.

To be sure, there were and are public lands involved, but because wildlife does not know land boundaries and many people refuse to accept the fact, when we removed our "No Trespassing" signs we were also removing the very cumbersome and nondefineable boundary lines.

Our aim was and is, first, to protect the land; secondary, to provide space for wildlife; and third, to provide recreation for people. The wildlife runs free but we do have a visitor permit fee for the public.

What have we accomplished? We have protected our lands from being ruthlessly overrun, we have provided that very precious commodity "space for wildlife," and we can be proud that everyone who recreates on Safari Land has a quality experience.

If the planners for the future really care about our wildlife and quality recreation, they must know that despite any population growth, whether permanent or tourist, space for wildlife can be doubled in the State of Wyoming by really involving the landowner.

The landowner must also be motivated to accept the new role of ranching for wildlife. Since most ranchers love wildlife, this may not be a problem, but because hunters and fishermen are a vital part of good wildlife management, the rancher must accept the fact that he also must be involved in people relations.

We in Elk Mountain Safari would recommend to any rancher, whether in Alaska, Colorado, or Wyoming, that there is a same "good feeling" in caring for wildlife that has motivated all ranchers for generations to keep and be proud of his sheep and cow herds. We also know that maintaining a high-quality environment will attract the quality of people that will enjoy and respect the land just the same as we do. It's that simple.

I would like to again quote Walt Gasson, staff biologist for the Wyoming Game and Fish Department. In his article "Sharing the Landscape," printed in Wyoming Wildlife, February 1985:

> The issue is one of land use. Is it better to manage land for recreation and wildlife or for agricultural production? It is at least arguable that one could make more money and do less harm to natural systems by managing land for wildlife and recreation. Much of Wyoming is simply not good agricultural land by most standards. We grow only a fraction of a percent of the nation's grain. Our climate is ill-suited to the production of most row crops.
>
> Despite our cowboy image, we do not rank high in the production of red meat in the United States. Wyoming is on the marginal edge of agriculture in the United States because it is too dry, too cold, and too rough to support a great agricultural industry.
>
> However, much of it is country that will support wildlife like nowhere else in the United States. On the same habitat that produces ten thousand dollars worth of beef in a cow-calf ranching operation, a prudent manager could make at least twenty thousand from deer hunting and perhaps one hundred thousand in non-consumptive use of wildlife.
>
> Agricultural is firmly rooted in Wyoming, and not likely to go to any trouble to adopt the idea of producing wildlife instead of livestock and crops. Perhaps a more realistic solution is a combination operation, based on the production of wildlife and livestock. At any rate, the value of wildlife on private lands represents a valuable resource that deserves a great deal of consideration. The operator who denies wildlife a significant role in the management of his or her farm or ranch is making a serious economic and ecological mistake.

Mr. Chairman, thank you for the opportunity to make these few comments. Together I think we have a great opportunity. There are problems but I think that they can be overcome. I would suggest that the lead is yours.

Senator WALLOP. Thank you, Vern. Not for the suggestion, I'm willing to let some others share that, thank you.

Carolyn.

STATEMENT OF CAROLYN DUNCAN, ON BEHALF OF THE HANNA SPORTSMEN CLUB, HANNA, WY

Ms. DUNCAN. I'm Carolyn Duncan. I represent the Hanna Sportsmen Club and we're also landowners down in the middle of Safari country. Among my solutions and recommendations are to encourage the BLM to use existing regulations to help ensure access to public lands.

Regulations CFR 43-4110.5(d) says if more than one qualified applicant or landowner applies for a grazing permit on the same public land, the BLM may allocate grazing use to the applicant who provides "public ingress and egress across privately owned or controlled land to public lands."

Regulation CFR 4170.1(a), the BLM may withhold issuance of a grazing permit or lease or suspend grazing use or cancel grazing permits for violations of the regulations governing grazing leases. This is BLM's strongest tool to use when grazing lessees deny people legal access to and on public lands.

In addition, the BLM has authority to condemn or exchange lands, or negotiate easements for public purpose. Providing access for recreations is considered a public purpose. Seldom is condemnation or exchange used since condemnation is unpopular and time consuming, exchange authority could probably solve most problems not only providing large areas of public use but enabling the landowners to consolidate their private holdings.

The BLM has not used management tools that are available. In fact, in my experience, the BLM makes such an effort to remain neutral that it actually hinders the public which it serves.

As an example, I found an easement dated 1957 among the county records that had never been made public. When I consulted the BLM about this in 1983, they said, "Our secret is out."

In regard to county roads, I urge the county attorneys to enforce the Wyoming Supreme Court addition dated March 15, 1985, which supports the county roads as they presently lay. Arguments claiming that re-routing in years past makes the county roads no longer valid are disclaimed. The consensus of this decision is that roads used by the public and maintained by the county are indeed the county roads as they lay. Any old county records are simply general descriptions of the approximate locale of the road.

I agree with Mr. Oden that assigning all BLM State lands along the county roads. When signs were requested by our sportsmen club in the Rawlins district, financial problems were cited. However, the public is entitled to know exactly where public lands are located, especially along access roads. Volunteers could help with this program.

If, according to Mr. Schrinar, State lands of Wyoming are not intended for general use but for economic benefits for all citizens, then competitive bids for these State lands should be aggressively pursued. State lands in Oklahoma are competitively bid and this practice has quadrupled that State's income. This added income in Wyoming could possibly be applied to some sort of liability insurance for private landowners who allow the public to cross private lands and also to provide aid to those landowners who are confronted with the "slob hunter."

Presently there are over 2,400 miles of roads maintained by the BLM in the Rawlins district. However, only 16 percent of these roads are open for public travel. The rest are controlled by landowners. This practice, in fact, could be construed as using public funds for private roads. Perhaps if the landowners were considered commercial users of these roads they would be more inclined to allow public travel.

The Unlawful Enclosure Act of 1885 was purposely written to enforce access to public land and to prevent the problems we have today and was used successfully. Problems arise when misinformation is distributed by the media and local sources of information. Every effort should be made to get correct information to the public. As an example, the Rawlins Chamber of Commerce prints a very inaccurate map showing all of Carbon County as being privately owned. To an out-of-State sportsman, or a tourist, this information is misleading and creates a definite problem. Often a single sentence in a news release completely changes the concept of the article.

As an example, in today's paper, an article about this very meeting stated that Safari was successful in getting an injunction against the public using private lands which, indeed, there was an injunction against the public getting to public lands, even if that meant access to their own home.

We have received the BLM report concerning Carbon County Road 400 that reads like fiction with a major part of the information based on assumption and not on historical facts or county and State records. One complete antelope area is controlled by the Bolton Ranch, and this could be changed by issuing licenses in the area. In fact, one license selling agency in Rawlins sells the $50 Bolton trespass permit along with the antelope license.

We have found the public in general does not destroy property or litter private or public land. This is the case of a few bad apples ruining access for everyone.

The possible solution is to encourage reporting of those who are a nuisance. The Game and Fish has had excellent results with the hot line for poaching, so perhaps a similar monitoring system could be established in regard to vandalism.

It should be emphasized that under present laws that game animals are property of the State and are controlled by seasons determined by the Game and Fish Commission. Private landowners often view themselves as self-appointed managers of game. I have a quote that was directed to me by a member of Safari: It says,

> I get two hundred and twenty-five dollars for every deer hunt off Elk Mountain. That is what one of my calves cost, and how many of my calves would I give away.

And it should be emphasized not any member of Safari owns any land on Elk Mountain whatsoever.

Senator WALLOP. The purpose of this is not to engage in one side or the other, it is to hear a discussion from one end to the other of the issues which confront us, and do all the congratulating you wish when the committee is over.

James Magagna.

STATEMENT OF JAMES MAGAGNA, ON BEHALF OF THE WYOMING WOOL GROWERS ASSOCIATION, AND THE WYOMING LANDS COUNCIL

Mr. MAGAGNA. Thank you, Senator Wallop. For the record, I've been asked to offer my comments both on the behalf of the Wyoming Wool Growers Association and on the Wyoming Lands Council.

The solution to public and private land access in Wyoming lies in a redefinition of the problem. This is an obvious oversimplification. However, the prevalent conception of the problem is exemplified by "No Trespassing" signs, hunter access complaints and legal battles. The access problem, so defined, likely has no solution which safeguards the rights of all parties. Join me for a moment in viewing the problem as how can the public and private sectors better cooperate to meet recreational needs in the State.

Today we do not have a clear measure of the demand for this type of recreational opportunity. The number of hunter access complaints is not a measure of supply and demand. It only serves to detail a specific access problem. Similarly, the number of public land acres lacking access is not a measure of the problem. There are, conversely, many thousands of acres of private lands to which access is freely given. The number of recreation days, fishing days, hunting days that could be provided in the State have been referenced.

Here again, these are an indication of recreational potential. They're not an indication of a decision by the State of Wyoming that we should, in fact, maximize that potential, encourage the use of every hunting, fishing recreation day that our resource may be able to provide. We must quantify the need for additional access, identify geographical areas where it is needed and specify the type of use and season for which it is needed.

Where a need for greater access has been identified, the private landowner must objectively review his own multiple use land management objectives. In recent times these decisions are unfortunately being increasingly influenced by financial considerations. The landowner realizes that every use of his land is to some degree a consumptive use of that natural resource. Public access, like grazing, becomes a liability to the land if not properly managed and controlled. A rancher must weight past experiences, his own management capabilities and expertise, liability, conflicts with other uses, potential for abuse, and so forth, against potential benefit. The answer will often fall somewhere in between no access and complete unrestricted access.

What are the potential benefits to a private landowner from allowing greater access to his land, or across the land to adjacent public lands? In the case of some unfenced lands it may simply be less of a hassle to allow unrestricted access than to attempt to control use. In a few other cases the public relations motive may be adequate compensation. Whether a fee is actually charged, recreational access is a consumptive use of the land and the landowners' right to a reasonable return must be recognized by all.

Tourism, wildlife, and recreation are the second largest industry in the State of Wyoming. It has been calculated that the value of an antelope hunter day is $85.56, that of a general recreation day at $44.24. A significant portion of this benefit should accrue to the landowner who provides this opportunity in many cases.

I've spent, Senator, sometime discussing private landowner management decisions because a better understanding of the landowner perspective, particularly by Federal and State agencies, must precede cooperation in meeting recreational needs. The emphasis at the Federal level, particularly with the land management agencies, must shift from attempts to force access to innovative ways to encourage access, which is mutually beneficial to the public lands, the private landowner and the recreating public.

And this connection somewhat bothers me to hear our Federal management agency talking about the permanence of access solutions. Indeed, I submit access to private land for recreation must be a dynamic movement in the State of Wyoming, not a permanent solution, which guarantees access for eternity, whether the need and demand for that particular access continues to exist.

The issue of access across private lands to public lands is currently analyzed by the agencies primarily in terms of acquisitions, land exchanges, perpetual exclusive easements and even condemnation. These are not the tools with which we can cooperate to increase recreational opportunities.

Similarly, the public land grazing permit is not an appropriate place to address the issue of access which is not associated with grazing administration. Section 402 of FLPMA and supporting regulations, should be clarified by specifying that the terms and conditions which the Secretary may place on the grazing permit must relate to the public land grazing activity. Conversely, the grazing permittee should receive no benefit in grazing terms, and conditions or fees based upon his policy of allowing public access to private lands.

Changes in Federal policy should focus on providing greater flexibility to local land managers to enter into limited, non-permanent cooperative agreements with private landowners designed to enhance recreational opportunities within a block of private public lands. In some instances this may involve controlling or limiting access to both public and private lands to a specified season, type of recreation, or number of users. Recreation management may be handled by the public agency or by the private landholder. A fee may be charged for use of lands within the block with any amounts above administrative costs perhaps being apportioned between the private landowner and the public agency. Signing, mapping, and media releases would emphasize the cooperative aspects of this project.

It does not appear that any specific federal legislation would be needed to authorize cooperative agreements involving these flexibilities. As has been suggested, the cooperative management agreement would seem to be an appropriate vehicle to use. Specific Federal guidelines should be prepared to supply the framework. I suggest these guidelines could best be developed through authorization of more experimental programs of this type, similar to the experimental stewardship program.

Senator, I recognize my comments have provided very little for you to take back for congressional action. I'm rather thankful for that. In fact, I strongly believe this hearing will have served all of us well if it only leads to a little greater recognition that access needs in the State of Wyoming need not be a conflict. In fact, access is an opportunity.

Thank you.

Senator WALLOP. I hear a number of things going throughout the panels, just trying to summarize a little bit. One, everybody here comes to the concept of recreation as an asset to Wyoming, whether it is a consumptive recreation in terms of hunting and fishing, or one which is just merely enjoyment of the resources we have, natural or otherwise. The access is a somewhat shifting piece of ground in terms of definition and requirement. That there are conflicts that exist between the consumers of the various assets and the holders of the property, there are conflicts, I think that comes through loud and clear.

There is a lot of places where there is a lot of cooperation and a lot of opportunity that is perhaps still greater here than in any other State. There is a future that is shifting, that land ownership patterns are changing. They've been quoted from the likes of the Wyoming Wildlife Magazine very articulately.

The Forest Service suggests some variety of reasons that precipitated the change in landowner attitude are, one, the change in character of rural landowners from resident ranchers to absentee owners, the people seeking isolation and privacy; the subdivision of large open ranches in the small recreation oriented tracts; changes in private land ownership from stock ranches to dude and hobby ranches. There's threat in that. That isn't universal in Wyoming but there's threat in that, and if we don't recognize it, it strikes me we're inviting a problem, a future full of problems, rather than a future full of opportunity.

One of the threats could easily be this: that a landowner might just want to give up his BLM permit or his forest permit because of the hassle that is there. And then what do you do about access, if he is in such a position to prohibit it and you're not in, any longer, a position to force him into it through the leasing option? And then what happens if he says, "this is all a nuisance to me. I don't want any part of it. I don't want the public and I don't want the wildlife. I'm just going to fence it out of here."

That's a future I don't think we want to see. I don't think we even want to confront it, because there's too many things that are involved in that. It's far better earlier than later that we try to find a means of enhancing the relationship that has existed over the course of time between wildlife managers, recreation clubs, like the Wildlife Federation, those are some means of affecting the amount and opportunity that's there. If those institutions remain in conflict, it seems to me that everything that we treasure here in this state, is at a loss.

Let me ask just one question of both Hillary and Stan. What would it take to make it possible for a variety of special use permits to have a broader option? In other words, can a cabin for a sheep camp become a stopover for snow machines in the wintertime? All other things equal, can a special use permit, which is narrowly defined, become an opportunity in the recreation field without a change, either in regulation or in statute?

Mr. **Oden**. I hadn't given that much thought, Senator, but it's worth looking into. It may be possible.

Senator **Wallop**. Stan, do you know?

Mr. **Tixier**. I think we can work things like that out with the proper agreement between the benefiting parties. One aspect of it that troubles me a little bit from the line that you've mentioned earlier, in the earlier panel, and in the first panel also, was—when you're talking about the grazing permittee, the responsibility of the grazing permittee, and Hillary and I both answered in terms of the permit only——

Senator **Wallop**. I understand that.

Mr. **Tixier**. Yeah, because——

Senator **Wallop**. They're different things I'm addressing here. Yeah.

Mr. **Tixier**. OK, but I guess the point I'm making is the special use that's made of the national forest is an individual privilege that's granted for that particular use, whether it be as a cabin owner under a summer home permit or whether it be for a pipe line across the forest. So I guess what I'm getting at is the uses that others might be able to make of those facilities could be worked out on a mutually agreeable approach, but not as a profit making enterprise for a person who simply has a permit to use the public land.

Senator **Wallop**. Would that be the case in every instance or would there be some instances where a profit might be attached to this? Where it would also be within the concept of the provision of recreational opportunities, where they don't know exist? In other words, what I'm suggesting is why, if the cabin, for example, is a special use permit for a sheep camp, and the grazing season is over and here's a resource that is on Federal land, under a Federal permit, that could become an opportunity, with the cooperation of the special permittee, for a whole variety of other things. It could become a hunting camp, it—not with the outfitting kind of thing, but just somebody going up and staying in it, it could become a photography place, it could become a sort of overnight, sort of hostel, it could become a place where snow machines stop. What would happen is that at no additional management cost to the managing agency you would have a suddenly broadly expanded opportunity for the public to have recreational opportunities.

Mr. **Tixier**. I see what you're getting at, and I expect with a modification of that permit—because it doesn't provide for adding anything that an individual uses now, but with the modification—that might be possible. You also have to look at whether the United States is getting compensated for that——

Senator **Wallop**. Of course. I think that's true. One of the duly compensated things for the United States is more opportunity for the people who now recreate who now don't have to pay a charge to recreate, and yet you have a broad denied use of the public land. You know, I realize, since having sat on this committee as long as I have, there are some significant problems, or can be, but it strikes me again there's an opportunity here that may be something that just expands, the opportunities of public land estates.

I'm hearing one last thing, and Carolyn, I think part of it was reflected in yours, and part of it has been reflected by some of the land holding institutes, to the extent that anybody who identifies any segment of this as "mine alone," tension exists and will broaden not collapse. The opportunities will be smaller not greater. It seems to me the idea is to try to find a means to make it work, not the means to cease it.

I'm talking not just to your testimony but to that of some others, because to the extent that anybody can come back and say, you know, "there is only one way of doing this, and that's my way", is, to the extent that you create institutions and conflicts, and the ultimate loser is each side of the conflict. It just doesn't seem to me to provide more opportunity, it seems to me to provide less. Would you agree with that?

Ms. **Duncan**. Well, I agree to the situation of the landowner indeed controls his own land, but when the landowner controls access to thousands of acres of public land and refuses. To say, I agree that a landowner has all the privileges and entitlement to control his own land and the hunting thereof but when he controls access to public land and refuses to acknowledge an easement that he himself gave to the BLM as being for the public use, then that is something that this commission needs to look into and question.

Senator WALLOP. Well, that's really something for the courts, which is where it's been, and it's not up to us to make that determination, and what happens in other people's legal documents. Well, I think we have plenty to take back and chew on. I hope that those of you who have had an opportunity to observe this have found some things of interest, some hope for the future, some rising level of opportunity because out of the adversity that Wyoming suffers now comes, I think, real opportunity to make the state grow in ways that are probably lasting and of future benefit to all of those who treasure it for what it is.

I have asked for two things which will be part of this hearing record when the Congressional Research Service provides it. One is an analysis of State statutes, not only ours but others, limiting the rights of the private landowners for recreational use, and two is a legal analysis of access to legal lands. They will be printed in the record [1] and contribute to the understanding of this issue, I hope.

I'm reminded of this, as I listened in here to some of the things, the reactions of the guy who goes in to the psychiatrist's office and says, "Doctor, you got to help me."

Doctor says, "What seems to be the trouble?"

And the guy says, "Doctor, I don't know why but sometimes I think I'm a teepee."

Doc says, "Oh, that's pretty serious."

He says, "Oh, that's not all. Other times I think I'm a wigwam."

Doctor says, "I can't help you, son, you're too tents."

I hope we don't find our way into his circumstances where we're too tense to resolve the circumstances here.

The hearing record will remain open for statements and additional information until April 7. The hearing record will be printed and sent to you in about 4 months. Statements may be sent to my offices here, in the State, Rock Springs or otherwise, or to Washington, DC.

I want to thank very much the participants, some of whom had to travel through interesting Wyoming climates, road conditions, to get here, and for the variety of views that have been brought to bear on this issue.

It's a threshold event. The recreation—or, the Commission on Americans Outdoors will be looking at it from some perspective, the committee has some perspectives to look at, land managing agencies have some, and certainly the land users, whether they're recreationists, grazers, or other resource users, have an obligation in it.

It's been helpful and I appreciate everybody here, and I especially appreciate the courtesy and cooperation of those who came to watch. Thank you very much. The subcommittee stands adjourned.

[Whereupon, at 1:05 p.m., the hearing was adjourned.]

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[1] See appendix to this document.

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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STATE STATUTES LIMITING THE LIABILITY OF PRIVATE LANDOWNERS FOR PUBLIC RECREATIONAL USE

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February 20, 1986

STATE STATUTES LIMITING THE LIABILITY OF PRIVATE LANDOWNERS FOR PUBLIC RECREATIONAL USE

This report summarizes the results of a fifty-state survey of state legislation to limit the liability of private landowners who open their property to recreational use by the public.[1]

BACKGROUND--LIABILITY TOWARD THOSE WHO ENTER THE PREMISES OF ANOTHER

At common (i.e. non-statutory) law, traditionally, those who enter the premises of another are divided into three categories: trespassers, licensees, and invitees.[2] The categories indicate the relative legal status of the visitor, based on his legal right to be on the landowner's property. The distinction provides the basis for different duties of care imposed on the landowner applicable to each category. The greater the right of the visitor to be on the premises, the higher the standard of care due him imposed by the courts.

Historically, courts have struggled to keep these categories rigidly distinct, but the modern trend is to recognize that there is a sliding scale, and in some jurisdictions the distinctions have been abandoned altogether.[3]

Lowest on the legal scale is the trespasser, defined as "a person who enters upon land in the possession of another without a privilege to do so created by the possessor's consent or otherwise."[4] In general, intruders who enter the land of another have no rights, and must assume the risk of whatever they encounter. Thus the possessor has no duty toward trespassers to maintain his property in a safe condition, and is not liable for a failure to exercise reasonable care to remove hazards or to warn of their presence.

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[1] See Appendix for list of states with recreational use statutes.

[2] For a more thorough discussion of traditional common law duties to those who enter the premises of another, see Prosser on Torts, §§ 58-63, 4th ed., 1971.

[3] See, Rowland v. Christian, 69 Cal. 2d. 108, 70 Cal. Rptr. 97, 443 P.2d 561 (1968).

More recently, courts have created various exceptions to this general rule, imposing a duty of reasonable care even where the injured party had no right to be on the premises. The major exceptions involve attractive nuisances, known or frequent trespassers, or abnormally dangerous activities.[5]

The second category, "licensees", are defined as those who enter with the mere consent of the owner, nothing more. Such a person is not a trespasser, since he has the permission of the owner. Included in this category are those taking short cuts, spectators and sightseers, those who enter for a social visit, and canvassing salesmen. Early court decisions imposed liability on the defendant private landowner only for intentional, willful, or reckless misconduct resulting in injury to the plaintiff licensee.

However, an increasing regard for public safety has led to a modification of this position, and the imposition of a duty of some care toward a licensee, although the precise level remains vaguely defined and varies from state to state. In general, the courts impose a duty of reasonable care toward those who are reasonably forseeable to be on the premises. While the courts do not require the landowner to inspect for natural hazards, or to make them safe, they do require a warning for hazards known to exist.

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[4] Restatement (Second) of Torts § 329 (1964).

[5] Prosser on Torts, § 58, 4th ed., 1971. Note that in a sense these exceptions raise the status of the visitor to that of a "licensee" in that the landowner owes a higher level of care. However, it is clearer conceptually if the variable is considered as the forseeability of the harm, not the legal status of the visitor, since, in law, his legal status remains the same, that of trespasser.

The third category, "invitees", are defined as those who enter with the permission of the landowner, either express or implied, for mutual gain.[6/] Typical examples are customers in a store, and patrons of restaurants, beach areas, or amusement parks. The standard of care required for this category is stricter than that for mere licensees, and includes the duties to make safe, inspect for hazards, and to warn of hazards both known and those which should have been known.

Earlier decisions based the distinction upon the economic gain of the landowner derived from the presence of the invitee. However, more recently a stricter standard of care has been imposed even where the owner derives no economic benefit, such as free public lectures, and church services. In addition, liability has been imposed for injured users of municipal parks and playgrounds, and those on state or federal land.[7/]

In some states, this traditional distinction between licensees and invitees, and the differing standards of care due each, has been abandoned, and the higher "reasonable care" standard has been applied toward any and all who enter the premises of another.[8/]

RECREATIONAL USE STATUTES

The practical result of this potential for common law liability on the part of the landowner is to reduce the likelihood that property would be made available to the public for recreational purposes. Many landowners do not want the responsibilities for maintaining their property in a safe condition,

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[6/] The Second Restatement divides invitees into two classes: "public invitees", who are invited to enter land held open to the public, and "business visitors", who are invited to enter the premises of another for purposes connected with business dealings with the possessor. See Restatement (Second) of Torts § 332 (1964).

[7/] Prosser, op.cit., § 61.

[8/] See, e.g., Rowland v. Christian, supra, note 3.

or the added risk of suit if some member of the public became injured on their property.

Within the past twenty years, however, most states have enacted statutes that encourage private landowners to make their property available for public recreational purposes by limiting their liability for injuries to those who enter their land for such purposes. Although there is some variation from state-to-state, state "sightseer" statutes, as they are sometimes called, accomplish a similar general result: they eliminate the duty of the landowner to ensure that the property is safe as regards members of the public who use that property recreationally. Accordingly, the landowner cannot be sued for negligence in failing to maintain the property in a safe condition if a recreational user is injured there. The landowner remains liable, however, for willful misconduct, and the protection is lost if a fee is charged.

The effect of the statutes is to eliminate the common law distinctions between trespassers, licensees, and invitees where the visitor is a member of the public using the property of another for recreational purposes. The standard of care due all such recreational visitors is effectively reduced to that due other visitors without privilege: ie. trespassers. Colorado's statute[9/] provides a typical example:

> Limitation on Landowner's Liability
> ...[A]n owner of land who directly or indirectly invites or permits, without charge, any person to use such property for recreational purposes does not thereby:
> a) Extend any assurance that the premises are safe for any purposes;
> b) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed;
> c) Assume responsibility or incur liability to person or property or for the death of any person caused by an act or omission of such person.

[9/] Colorado Revised Statutes, 33-41-103, 104.

When Liability is not Limited

Nothing in this article limits in any way any liability which would otherwise exist:

a) For willful or malicious failure to guard or warn against a known dangerous condition, use, structure, or activity likely to cause harm;
b) For injury suffered by any person in any case where the owner of land charges the person who enters or goes on the land for the recreational use thereof; except that, in the case of land leased to the state or a political subdivision thereof, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this article nor shall any consideration received by an owner from any federal governmental agency for the purpose of admitting any person constitute such a charge;
c) For maintaining an attractive nuisance;
d) For injury received on land incidental to the use of land on which a commercial or business enterprise of any description is being carried on.

DISCUSSION

It is beyond the scope of this report to provide a detailed analysis of the plethora of issues presented in the case law involving recreational use statutes. However, certain pivotal questions emerge from a selective reading of the relevant cases.

1. Who are sheltered under the statutes?

Although most of the statutes are written as protecting "landowners", the statutory definition of landowner usually includes owners of some interest in land, such that lessees are also protected.[10/] Sometimes "persons in control of the premises" are also protected.[11/]

[10/] See, e.g., Idaho Code, 36-1604.

[11/] id.

Interestingly, the case law indicates that the United States is also a beneficiary of the liability limitation provisions.[12] While this result may seem incongruous to some, the reasoning adopted by the courts is fairly straightforward.[13] Under the Federal Tort Claims Act the United States is liable for tort claims "...in the same manner and to the same extent as a private individual under like circumstances...."[14] Since a private individual can take advantage of the state recreational use statutes, such protection is also available to the United States.[15] As a matter of policy, this result is not necessarily inappropriate, since, but for this protection, public recreation areas owned by the United States might be closed during certain hazardous periods, or in certain places, to avoid liability.

Regarding other public entities, such as states and municipalities, the answer is less clear. In California, for example, the state appellate courts are split as to whether their recreational use statute was intended to apply to land publicly held.[16]

2. What standard of care applies to protected landowners?

Typically, the statutes require that the behavior of the landowner be "willful" or "wanton" before liability will be imposed. The standard of care required is a matter of state law, as interpreted by the courts of the jurisdiction.[17]

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[12] Jones v. United States, 693 F.2d 1299 (9th Cir. 1982); Otteson v. United States, 622 F.2d 516 (10th Cir. 1980); Mandel v. United States, 719 F.2d 963 (8th Cir. 1983); But see Miller v. United States, 442 F. Supp. 555 (N.D. Ill. 1976) (No protection of Army Corps of Engineers because of Illinois recreational licensing statute.)

[13] 28 U.S.C. §§ 1346(b) and 2671-2680.

[14] 28 U.S.C. § 2674.

[15] See, Simpson v. United States, 652 F.2d 831, 833 (9th Cir. 1981).

[16] See, Mandel v. United States, 719 F.2d 963, 966 (8th Cir. 1983).

When is a Landowner Not Protected?

One of several factual situations may render the landowner beyond the scope of the statute. Possibilities include:

a. Charging a fee for recreational use.

b. The property is used primarily for commercial purposes.

c. The user is expressly invited onto the premises.[18]

4. What activities are included as "recreational"?

Most statutes indicate that the landowner owes no duty of care to those who use the premises for "recreational purposes", but also include a list of sample activities. Typically mentioned activities are: fishing, hunting, trapping, camping, hiking, sightseeing, swimming, boating, motorcycling, skiing, and snowmobiling. A few states also include harvesting and collecting firewood.[19]

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[17] Subsidiary issues include: Is actual knowledge required, or will constructive knowledge (defendant should have known of danger) suffice to create liability? Is gross negligence sufficient? (See Annotated Missouri Statutes 537.348: no protection for "Malicious or grossly negligent failure to guard or warn against a dangerous condition, structure, personal property which the owner knew or should have known to be dangerous, or negligent failure to guard or warn against an ultrahazardous condition which the owner knew or should have known to be dangerous...").

[18] The California statute denies protection for landowners to those who are "expressly invited" to enter the premises. (California Civil Code § 846). See, Phillips v. United States, 590 F.2d 297 (1979).

[19] See, e.g., Maine, Revised Statutes Annotated 14 § 159A; Annotated Code of Maryland Natural Resources 5-1101, et seq.

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February 20, 1986

APPENDIX

LIST OF STATES WITH RECREATIONAL USE STATUTES

Alabama	Ala. Code § 35-15-1
Arkansas	Ark. Stat. Ann. § 50-1102
California	Cal. Civil Code § 846
Colorado	Colo. Rev. Stat. § 33-41-101 et seq.
Connecticut	Conn. Gen. Stat. Ann. § 52-557(f),(g).
Delaware	Del. Code Ann. tit. 7 § 5901, et seq.
Florida	Fla. Stat. Ann. § 375.251
Georgia	Ga. Code Ann. § 105-401, et seq.
Hawaii	Hawaii Rev. Stat. § 520-1, et seq.
Idaho	Idaho Code § 36-1604
Illinois	Ill. Ann. Stat. ch. 70, § 31-37
Indiana	Ind. Code Ann. § 14-2-6-3
Iowa	Iowa Code Ann. § 111.1-111.7
Kansas	Kan. Stat. Ann. § 58-3201, et seq.
Kentucky	Ky. Rev. Stat. § 411.190, and § 150.645
Louisiana	La. Rev. Stat. Ann. § 2791
Maine	Me. Rev. Stat. Ann. § 159-A
Maryland	Md. Nat. Res. Code Ann. § 5-1101, et seq.
Massachusetts	Mass. Gen. Laws Ann. ch. 21, § 17C
Michigan	Mich. Comp. Laws § 300.201
Minnesota	Minn. Stat. Ann. § 87.021-87.026
Mississippi	Miss. Code Ann. § 89-2-1, et seq.
Missouri	Mo. Rev. Stat. § 537.345-537.348
Montana	Mont. Code Ann. § 70-16-301, et seq.
Nebraska	Neb. Rev. Stat. § 37-1001, et seq.
Nevada	Nev. Rev. Stat. § 41.510
New Hampshire	N.H. Rev. Stat. Ann. § 212:34
New Jersey	N.J. Stat. Ann. § 2A:42A-2, et seq.
North Dakota	N.D. Cent. Code § 53-08-01, et seq.
Ohio	Ohio Rev. Code Ann. § 1533.18
Oklahoma	Okla. Stat. Ann. § 10-15
Oregon	Or. Rev. Stat. § 105.655, et seq.
Pennsylvania	Pa. Stat. Ann. tit. 68 § 477-2, et seq.
Rhode Island	R.I. Gen. Laws § 32-6-1, et seq.
South Carolina	S.C. Code Ann. § 27-3-10
South Dakota	S.D. Codified Laws Ann. § 20-9-5
Tennessee	Tenn. Code Ann. § 11-10-101
Texas	Texas Stat. Ann. art. 1b
Utah	Utah Code Ann. § 57-14-1, et seq.
Vermont	Vt. Stat. Ann. tit. 10, § 5212
Washington	Wa. Rev. Code § 4.24.200, et seq.
West Virginia	W. Va. Code § 19-25-1, et seq.
Wisconsin	Wis. Stat. Ann. § 895.52
Wyoming	Wyo. Stat. § 34-19-101, et seq.

(44 states, as of February, 1986)

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A LEGAL ANALYSIS OF ACCESS TO FEDERAL LANDS

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April 7, 1986

A LEGAL ANALYSIS OF ACCESS TO FEDERAL LANDS

The cession to the central government of the lands between the Appalachian Mountains and the Mississippi River that belonged to the original colonies, together with the acquisition of the vast western territories have played a vital role in American history.

Prototypical land laws enacted by the Continental Congress, the Land Ordinance of 1785 and the Northwest Ordinance of 1787, established the federal system of rectangular surveying of lands for disposal and set up a system for the development of territorial governments leading to statehood. These statutes were affirmed or reenacted by the new Congress after ratification of the Constitution.[1]

Under the federal system of surveying, a principal meridian, base, standard and guides were first measured and marked, corner boundaries established, and the exterior lines of "townships" - squares six miles on a side - were surveyed. The township tracts were then divided into sections one mile on a side, containing 640 acres (the amount allowed under the Stock-Raising Homestead Act).[2] These were divided into halves (the 320 acres allowed under the Desert Land Entry Act,)[3] or quarters (the 160 acres allowed under the

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[1] See the Act of May 18, 1796, c. 29, 1 Stat. 464 as to surveying, and the Act of August 7, 1789, c. 8, 1 Stat. 50 as to territorial governments.

[2] Act of December 29, 1916, c. 9, 39 Stat. 862.

[3] Act of March 3, 1877, c. 107, 19 Stat. 377.

Homesteading Act,)[4] or smaller subdivisions (allowed under certain other acts). The divisions were absolute, that is each surveyed subdivision abutted the next without additional access corridors intervening.

The uniform federal practice of surveying the new public lands into squares of smaller and smaller sizes in order to convey uniform parcels under the various land disposal laws led eventually to access problems because lands wound up in intermingled federal and nonfederal ownership without platted corridors to serve as roads.

An additional problem was caused by the fact that over the years, Congress granted township blocks to states, railroads, and other grantees, resulting in further "checkerboard" ownership patterns.

Concurrent with the grants and disposal statutes, Congress also enacted a great many "right of way" statutes allowing people to create rights of way across the federal public lands for a great variety of purposes, including ditches, sluices, and roads.[5] As areas became developed, access problems were resolved as the practical exigencies dictated; settlers created roads as needed across open lands, and subsequent settlers took title to lands subject to the then existing rights of ways. Other access needs frequently were resolved by negotiations and purchase of the necessary rights because, given the intermingled pattern of land ownership, it frequently was to the mutual benefit of the parties involved to resolve access issues. However, given the intermingled ownership, disputes have always been a possibility.

Historically, until the enactment of FLPMA in 1976, the emphasis throughout most of the evolution of federal land law was on disposal of the federal lands to states and individuals, and on access across federal lands to non-federal areas of one kind or another. In some provisions, Congress has stated that the federal lands should remain open for certain uses, despite legislation establishing other uses. For example, the Organic Act for the National Forests states:

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[4] Act of May 20, 1862, c. 75, 12 Stat. 392.

[5] See e.g. 43 U.S.C. 931a-975g.

> ...Nor shall anything in such sections prohibit any person from entering upon such national forest for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof.... 6/

As noted, the thrust of such a provision is more to make clear that other non-timber uses may continue to be made of the national forests than it was expressly to ensure physical access to the lands.

However, in the case of lands within a federal grazing district that are being used by an individual rancher under a federal grazing permit, similar language may also apply to the issue of possible attempts to preclude access to those lands by others:

> Nothing contained in this Act shall restrict the acquisition, granting or use of permits or rights of way within grazing districts under existing law; or ingress or egress over the public lands in such districts for all proper and lawful purposes; and nothing contained in this subchapter shall restrict prospecting, locating, developing, mining, entering, leasing or patenting the mineral resources of such districts under law applicable thereto. 7/ (emphasis added)

This provision appears to mean that a grazing permittee may not exclude other lawful users of the same lands. The provision does not, however, address the issue of physical access to reach the lands in question.

6/ Act of June 4, 1897, c. 2, 30 Stat. 34.

7/ Act of June 28, 1934, c. 865, 48 Stat. 1272, codified at 43 U.S.C. 315e.

Similarly, the "Unlawful Inclosures of Public Lands Act,"[8/] passed in 1885 regulates the fencing of public lands and the obstruction of access to them, but not as fully as may at first appear. 43 U.S.C. sections 1061, and 1063 state respectively:

> All inclosures of any public lands in any State or Territory of the United States, heretofore or to hereafter made, erected, or constructed by any person, party, association, or corporation, to any of which land included within the inclosure the person, party, association, or corporation making or controlling the inclosure had no claim or color of title made or acquired in good faith, or an asserted right thereto by or under claim, made in good faith with a view to entry thereof at the proper land office under the general laws of the United States at the time any such inclosure was or shall be made, are hereby declared to be unlawful, and the maintenance, erection, construction, or control of any such inclosure is hereby forbidden and prohibited; and the assertion of a right to the exclusive use and occupancy of any part of the public lands of the United States in any State or any of the Territories of the United States, without claim, color of title, or asserted right as above specified as to inclosure, is likewise declared unlawful, and prohibited.
>
> No person, by force, threats, intimidation, or by any fencing or inclosing, or any other unlawful means, shall prevent or obstruct, or shall combine and confederate with others to prevent or obstruct, any person from peaceably entering upon or establishing a settlement or residence on any tract of public land subject to settlement or entry under the public land laws of the United States, or shall prevent or obstruct free passage or transit over or through the public lands: Provided, This section shall not be held to affect the right or title of persons, who have gone upon, improved, or occupied said lands under the land laws of the United States, claiming title thereto, in good faith.

[8/] Act of February 25, 1885, c. 149, 23 Stat. 321, codified at 43 U.S.C. 1061 et seq.

This statute was enacted after reports by the Secretary of the Interior showed that private individuals and corporations were using fences to preempt use of sometimes vast areas of public domain lands.[9/]

The statute has been interpreted by the Supreme Court in Camfield v. United States[10/] as a constitutional limitation on the actions of private land owners such that fences built on private land could be abated by the federal government if the fences unlawfully enclosed public lands and the person constructing the fences did so without any claim or color of title. The Court noted that since the federal government acts both as the national legislature and as an ordinary proprietor with respect to its lands, it could, even without legislation, abate fences located on the public lands since the building of fences with intent to enclose public lands for private use would be a mere trespass.[11/] Therefore, the Court interpreted the 1885 legislation as limiting the actions of private landowners on their own lands that constituted a "nuisance" injurious to the public at large, here the unlawful enclosure of public lands.

The statute and its penalties apply even if the fencing is incomplete, if the fence together with impassable features of the surrounding terrain results in enclosure.[12/] Conversely, fencing may be permissible if ways are

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9/ See H.R. Rep. No. 1325, 48th Cong., 1st Sess. (1884).

10/ Camfield v. United States, 167 U.S. 518 (1897).

11/ Id., at 524. It could be argued, however, that the government through its inactions had impliedly licensed so many uses of the public domain that perhaps legislation was necessary to clarify what acts constituted trespass.

12/ Thomas v. United States, 136 F. 159 (9th. Cir. 1905).

left through it.[13] Fences may be violative if the fences of several landowners have the cumulative result of closing off the public lands.[14]

In the Camfield case, the defendant had bought in fee or in part, property rights to the alternating non-federal squares of property in the area of question. By selectively fencing portions of his own squares, defendant succeeded in enclosing considerable government acreage. That this was the intended and unlawful result the Court surmised from the fact that the rest of each of the defendant's squares was not fenced. In short, although the fences were on private property, the result was as though a person had simply fenced off a portion of the public domain. In this situation, the Court held that the government could bring an action under the statute to have the fence removed. However, the Court also said:

> It is no answer to say that, if such odd-numbered sections were separately fenced in, which the owner would doubtless have the right to do, the result would be the same as in this case, to practically exclude the Government from the even-numbered sections, since this was a contingency which the Government was bound to contemplate in granting away the odd-numbered sections. So long as the individual proprietor confines his enclosure to his own land, the Government has no right to complain, since he is entitled to the complete and exclusive enjoyment of it, regardless of any detriment to his neighbor; but when, under the guise of enclosing his own land, he builds a fence which is useless for that purpose, and can only have been intended to enclose the lands of the Government, he is plainly within the statute, and is guilty of an unwarrantable appropriation of that which belongs to the public at large.[15]

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[13] Golconda Cattle Co. v. United States, 214 F. 903 (9th Cir. 1914), United States v. Johnson, 172 F. 635 (9th. Cir. 1908).

[14] Thomas, supra.

[15] Camfield, supra., at 528.

In other words, if a property owner fences his private land for legitimate purposes, and enclosure of the public lands is "merely incident" owing to the peculiar situation of the lands, the fence is not unlawful. The statute applies to unlawful fencing and fencing is not unlawful simply because it results in obstruction: "The act of a person in fencing or inclosing his own land is lawful...It is only when, under the guise of inclosing his own land, a person builds a fence for the purpose and intention of inclosing public lands of the government that the fence or inclosure becomes unlawful."[16/]

That the 1885 statute may still be a useful tool in at least some instances is evidenced by a recent case in which fences that did not serve any legitimate purpose of a landowner but which prevented the migration of antelope were ordered removed or modified.[17/] During the course of the opinion, the court also noted that Congress amended the 1885 Act in 1984 and that it is still a viable statute.[18/]

In those instances where actions are taken on federal lands to block access by others, e.g., by padlocking gates or blocking roads, even absent a statute the federal government can take action as can any landowner. Unauthorized use of the federal lands constitutes trespass and it is a well-established principle that the United States may sue even in state courts to protect its property.[19/]

In this regard, 36 C.F.R. 261.10 prohibits "(f) Placing a vehicle or other object in such a manner that it is an impediment or hazard to the safety or

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[16/] Potts v. United States, 114 F. 52, 54-55 (9th. Cir. 1902).

[17/] United States v. Taylor Lawrence, No. C85-0136-B, (D. Wy. April 11, 1985)(available on LEXIS, Genfed library, Dist. file).

[18/] Pub. L. 98-620, 98 Stat. 3335, 3360.

[19/] See e.g., Cotton v. United States, 52 U.S. (11 How.) 232 (1850).

convenience of any person." Section 261.12 prohibits "(d) Blocking, restricting, or otherwise interfering with the use of a road, trail, or gate" within the National Forest System. Violations of these regulations are punishable under section 261.1b by "a fine of not more than $500 or imprisonment for not more than six months or both pursuant to Title 16 U.S. Code section 551, unless otherwise provided."

As to BLM lands, 43 C.F.R. 4140(b) states that persons performing any of the prohibited acts listed in that section, including "Interfering with lawful uses or users" may be subject to civil and criminal penalties, which can include suspension or cancellation of a grazing permit or lease under section 4170.1-1, a fine of not more than $500 under section 4170.2-1, or a fine of not more than $1,000 or imprisonment for no more than 12 months or both under section 4170.202 on wilful violations.

43 C.F.R. 9239.2-1 relates to unlawful enclosures:

> § 9239.2 Unlawful enclosures or occupancy.
>
> § 9239.2-1 Enclosures of public lands in specified cases declared unlawful.
>
> (a) Section 1 of the Act of February 25, 1885 (23 Stat. 321; 43 U.S.C. 1061), declares any enclosure of public lands made or maintained by any party, association, or corporation who "had no claim or color of title made or acquired in good faith, or an asserted right thereto, by or under claim, made in good faith with a view to entry thereof at the proper land office under the general laws of the United States at the time any such enclosure was or shall be made" to be unlawful and prohibits the maintenance of [sic] erection thereof.
>
> (b) Section 4 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1271; 43 U.S.C. 315o) provides:
> Fences * * * and other improvements necessary to the care and management of the permitted livestock may be constructed on the public lands within such grazing districts under permit

> issued by the authority of the Secretary, or under such cooperative arrangement as the Secretary may approve.
>
> (c) Section 10, paragraph (4) of the Federal Range Code, § 4112.3 of this chapter, containing rules for the administration of grazing districts prohibits "Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit."
>
> (d) Section 2 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1270; 43 U.S.C. 315a), provides that "any willful violation of the provisions of this act" or of "rules and regulations thereunder after actual notice thereof shall be punishable by a fine of not more than $500."
>
> (e) Violations of any of the provisions of the Act of February 25, 1885, constitute a misdemeanor (Sec. 4, 23 Stat. 322; 35 Stat. 40; 43 U.S.C. 1064).

While there have been instances where private individuals have taken unlawful actions, the crux of the problem in modern times is more likely to be that of obtaining physical access to the public lands as they have become surrounded by private lands. The Inclosure Act has been interpreted as not providing directly for access to public lands, but rather as preventing unlawful barriers to the lands, whether concrete ones such as fences, or intangible ones such as threats. Congress "...was not concerned with the initiation or creation of means of access to public lands but with the matter of keeping the boundaries thereof open so that all persons who could lawfully reach the same might enter. If it had intended or contemplated, as now claimed for the government, the use of a way over privately owned lands to reach the public domain, it would no doubt have so indicated and probably made some provision by which such way could be fixed and located."[20/]

[20/] United States v. Rindge, 208 F. 611 623, (D.S. Cal. 1913).

In referring to a "way over privately owned lands to reach the public domain," the court was referring to an access easement. An "easement" is the right of one person to go onto land in possession of another and make a limited use thereof.[21/] Easements are created either expressly--by grant, deed, will, reservation, etc.--by implication, or by prescription. Congress has at times expressly authorized easements generally (see e.g. Title V of FLPMA, codified at 43 U.S.C. 1761 et seq.) or granted them specifically (e.g. the land grant railroad acts).

Expressly created easements, obviously are clear as to their establishment.

The United States recently argued that Congress impliedly reserved access rights across private lands in a case where federal lands and a reservoir were isolated among private lands.[22/] When the federal government cleared a road for public use partly across public lands and partly across lands belonging to the Leo Sheep Company, a successor in interest to a land grant railroad, the company filed suit to quiet title against the United States. The government did not claim any express reservation of an easement in the railroad land grant legislation, but argued that an implicit reservation of an easement was established under general property law and was evidenced by the Unlawful Inclosures of Public Lands Act of 1885.

The government analogized its position to that of a grantor who may be said by a court to have impliedly reserved an easement of necessity to pass over property granted by him if such passage is necessary to reach the retained property. The Supreme Court saw two problems with this theory in the context

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[21/] Chester M. Smith and Ralph E. Boyer, Survey of the Law of Property, 2d ed. at 381.

[22/] Leo Sheep Co. v. United States, 440 U.S. 668 (1979).

before it: first, whatever right a private landowner might have, it is not clear that that right would include the right to construct a road for public access to a recreational area; the Court thought it unlikely that Congress contemplated this type of intrusion in 1862, the year the railroad legislation in question was enacted. It also could not reasonably be maintained that failure to provide access to the public would render the reservoir land useless, factors that usually assist a court in finding an implied easement of this type.[23/]

The second problem the Court saw with the government's position was that the purpose of the rather fictional concept of easements of necessity is to avoid a harsh result for private landowners who have no other recourse in order to reach their lands. Unlike the private landowner, however, the government could exercise its power of eminent domain to secure access to its lands by condemning a roadway and paying compensation for it. For this reason, the Court noted that state courts in Texas and Tennessee have held that the doctrine of easements of necessity is not available to the sovereign.[24/]

In asserting a right to cross the private lands at the corners of the checkerboard parcels the United States quoted from a 1914 case that noted that the odd-numbered sections:

> ...touch at their corners and their points of contact, like a point in mathematics, are without length or width. If the position of the company were sustained, a barrier embracing many thousand acres of public lands would be raised, unsurmountable except upon terms prescribed by it. Not even a solitary horseman could pick his way across

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[23/] Id., 679-680.

[24/] Id., n. 17 at 680.

> without trespassing. In such a situation the law fixes the relative rights and responsibilities of the parties. It does not leave them to the determination of either party. As long as the present policy of the government continues, all persons as its licensees have an equal right of use of the public domain, which cannot be denied by interlocking lands held in private ownership. 25/

The Court did not comment on this argument directly, but quoted with approval the language on lawful fencing from Camfield set out above and said: "In that light we cannot see how the Leo Sheep Company's unwillingness to entertain a public road without compensation can be a violation of that Act." 26/ "Congress obviously believed that when development came, it would occur in a parallel fashion on adjoining public and private lands and that the process of subdivision, organization of a polity, and the ordinary pressures of commercial and social intercourse would work itself into a pattern of access roads....It is some testament to common sense that the present case is virtually unprecedented, and that in the 117 years since the grants were made, litigation over access questions generally has been rare." 27/

The petitioner in the Leo Sheep case was the successor in interest to a land grant railroad - a grantee serving in a quasi public capacity - a fact that has been said to result in a liberal construction of the grants to it. 28/ Although this fact may distinguish the Leo Sheep case from other similar

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25/ Mackay v. Uinta Development Co., 219 F. 116, 118 (8th Cir. 1914) quoted in the brief of the United States in Leo Sheep at 25.

26/ Id., at 685.

27/ Id., at 686-687.

28/ Id., 682-683, quoting from United States v. Denver and Rio Grande R. Co., 150 U.S. 1, 14 (1893).

cases, it may be a distinction without a difference in that the reasoning of the Court as to why access easements should not be implied in favor of the government appears to be applicable to non-railroad, non-quasi public entity situations as well. Indeed the same reasoning was stated in dicta in the 1913 Rindge case discussed earlier, in which the court discussed the fact that the easement of necessity was a remedy for problems involving private rights, but that the government's position was essentially that of attempting to reserve a public way.[29/]

An early case mentioned by the Court in Leo Sheep as possibly allowing access across private lands if that had been the custom in the area does not appear to afford much assistance either.[30/] That case was a suit in equity by cattle ranchers who sought to enjoin sheep ranchers from using their private lands for access and grazing in the process of using interspersed public lands. The case occurred before the legislation creating grazing districts was enacted, none of the lands were fenced and all livestock owners made free use of the common public lands. Under these circumstances, the Court did not feel that there was any "equity" in the complaint, since the result of granting the requested relief would have been to permit only the adjoining cattlemen to use the public range. In distinguishing this case in Leo Sheep, the Court noted that the 1890 Court, in addition to weighing heavily the customs of the unfenced rangelands, also was influenced by the lack of alternatives of the sheepherders. This reference is confusing since the subject of the Leo Sheep case was access, yet it was pointed out several times in the 1890 case that there were several public ways to reach the public lands.

[29/] United States v. Rindge, supra., at 619.

[30/] Buford v. Houtz, 133 U.S. 320 (1890).

Therefore, the lack of alternatives in that case seems to have been only with reference to preventing grazing trespasses. The 1890 Court did not treat the access issues separately or specifically. It appears that the Court at that time may simply have been unwilling to grant relief characteristic of cases involving settled, fenced properties in the context of the vast, unfenced commonly used, open range. Because of the unique historical context of the 1890 case and the fact that the suit was between two *private* parties, it does not appear very helpful in constructing an argument that custom may permit a federal access right across private lands in modern areas that may be subdivided, settled and fenced.

Of course, where the customary use of an access way is sufficiently open, notorious, and continues for the necessary length of time, a prescriptive right for members of the public to continue that use may be found.[31]

Another important principle of property law runs through these judicial discussions of easements and their creation. An easement is a *limited* interest in the lands of another,[32] and the intended uses and users of an easement may not be clear. The duration and scope of an easement vary and must be ascertained by an examination of the intent of the parties and the circumstances surrounding the creation of the easement.[33] For this reason, the Court in *Leo Sheep*, apparently viewing the U.S. government as a landlocked proprietor for sake of considering the argument, said that "whatever right of passage a private landowner might have, it is not at all clear that it would include the right to construct a road for public access to a recreational area."[34]

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[31] Richard R. Powell, The Law of Real Property, Vol. 3, (1985) at 34-104.

[32] *Powell*, *supra*, at 34-13.

[33] *Id.*, at 34-181 as to easements created by written instrument, and 34-203 as to easements created by necessity, implication, or prescription.

In other words, there may be instances where the United States may have access rights, express or implied, related to its role as landowner that do not extend to a general public right for all purposes.[35]

The import of the Leo Sheep case seems to be that the federal government cannot rely on implied access easements, at least for public use, and that in those cases where expressly created access does not exist, the government must affirmatively obtain it.

In this regard, it should be kept in mind that under 40 U.S.C. 257, whenever an administrator is authorized to purchase property of any kind, that administrator is also authorized to condemn it unless Congress has indicated otherwise. 40 U.S.C. 257 reads in part:

> In every case in which the Secretary of the Treasury or any other officer of the Government has been, or hereafter shall be, authorized to procure real estate for the erection of a public building or for other public uses, he may acquire the same for the United States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so....

One of the most significant provisions authorizing acquisition of access is 43 U.S.C. 1715(a). This provision was enacted as part of FLPMA, which also systematically repealed a great many fragmentary authorizations of rights of way across federal lands and enacted a new set of coherent and comprehensive provisions on federal rights of way across the public lands.

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[34] Leo Sheep, supra, at 679.

[35] This issue is raised in a pending case Elk Mountain Safari, Inc. v. United States, C85-0422 (D. Wy.)

43 U.S.C. 1715(a) authorizes the Secretaries of Interior and Agriculture to acquire property interests necessary to secure access to the public lands and the units of the National Forest System:

> Notwithstanding any other provisions of law, the Secretary, with respect to the public lands and the Secretary of Agriculture, with respect to the acquisition of access over non-Federal lands to units of the National Forest System, are authorized to acquire pursuant to this Act by purchase, exchange, donation, or eminent domain, lands or interests therein: Provided, That with respect to the public lands, the Secretary may exercise the power of eminent domain only if necessary to secure access to public lands, and then only if the lands so acquired are confined to as narrow a corridor as is necessary to serve such purpose. Nothing in this subsection shall be construed as expanding or limiting the authority of the Secretary of Agriculture to acquire land by eminent domain within the boundaries of units of the National Forest System.

The Secretaries also have general authority under section 43 U.S.C. 1765 to, among other things, impose terms and conditions on a right of way to carry out the purposes of FLPMA and any rules and regulations issued thereunder; to protect federal property and economic interests; to manage efficiently the lands which are subject to the right of way or adjacent thereto and protect the other lawful users of the lands adjacent to or traversed by such right of way; and otherwise protect the public interest in the lands traversed by the right of way or adjacent thereto.

In 43 U.S.C. 1764(g), Congress expressly provided that the Secretary concerned could participate in reciprocal granting of rights of way, waiving the rental fees that otherwise would obtain if the recipient of a federal right of way granted the government a right of way in return:

> ...Provided further, That the Secretary concerned may waive rentals where a right-of-way is granted, issued, or renewed in reciprocation

> for a right-of-way conveyed to the United States in connection with a cooperative cost share program between the United States and the holder....

The Secretary of the Interior also has the authority to condition grazing leases and permits under 43 U.S.C. 1752. The Regional Solicitor for Denver has stated[36/] that this section gives the BLM authority to "require a permittee or licensee to grant the BLM access across his lands as a condition to the receipt of a permit or license." The remainder of the brief opinion, however, indicates that the access right for BLM that could be required was for the purpose of administering the grazing leases or permits. Whether a general authority to impose terms and conditions on a federal grant for which a fee is extracted is sufficient authority to require more than the access necessary to administer the federal program without some additional adjustment of the compensation involved is an open question. The courts have said that it is permissible for the federal government to condition the granting of a federal benefit.[37/] On the other hand, it may be advisable to clarify legislatively that general public access, i.e. for more than related federal administrative purposes may be required and that some adjustment of the fees otherwise charged may be made.

The extent to which BLM easement acquisition procedures currently are adequate to secure broad access rights is an area that may be analyzed further.

Additional authorities to acquire access, and the policies of the BLM and Forest Service as set out in publications of those agencies are attached.

[36/] Memorandum from Regional Solicitor, Denver to State Director, BLM, Wyoming, December 7, 1979.

[37/] United States v. Appalachian Electric Power Co., 311 U.S. 377, 427-428 (1940).

Summary

As a result of the manner in which the lands in the American West were surveyed and conveyed, there are many instances where federal lands are now totally or partially inaccessible by normal means. Current authority exists, at common law and by statute for the federal government to abate actions by private citizens on the federal lands that unlawfully prevent access by others. Some authority exists by which the federal government may also abate such actions taken on adjoining private lands, but this authority does not provide adequate redress in all instances.

Even more fundamentally, it appears that in some instances the federal government needs to acquire access corridors, either through full fee ownership of the necessary lands or through easements over non-federal lands. Various authorities exist to accomplish that end through purchase, donation, exchange, or condemnation.

The full extent of the access problem, an analysis of the areas and priorities for acquisition, and the estimated costs appears to be areas regarding which the administrative agencies could supply further information. In these times of severe budgetary constraints, it may also be productive to probe the advisability of providing additional and clarifying authority for conditioning certain federal grants or permits on provision of access by the applicant, for expanding the use of reciprocal rights of way, and for other means of obtaining needed access without outlay of current funds.

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American Law Division
April 7, 1986

Form 1221-2
(June 1969)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

MANUAL TRANSMITTAL SHEET

Release
2-214

Date
9/30/84

Subject

2100 - ACQUISITION

1. Explanation of Material Transmitted: This release transmits BLM Manual Section 2100 which provides policy direction for the Bureau's land acquisition program. It includes authorities, responsibilities, references and glossary of terms. The subject material was formerly contained in Manual Section 2130, Acquisition of Lands or Interests in Lands by Purchase or Condemnation.

2. Reports Required: None.

3. Material Superseded: None.

4. Filing Instructions: File as directed below.

REMOVE:	INSERT:
None	2100

(Total: 11 sheets)

James M Parker
Associate Director

GPO 884-917

2100 - ACQUISITION

.01 Purpose. The purpose of this Manual, which contain the requirements for acquisition policy and acquisition management, is as follows:

A. Determination of the need for acquisition of lands or interests in lands through planning and on-the-ground location.

B. Methods used to acquire legally sufficient rights to meet resource management needs, including negotiated purchase, donation, exchange, and condemnation.

C. Procedures used in the acquisition process, including deed preparation; title evidence, clearance and opinion, negotiations, recording, payment, compliance with P.L. 91-646, relocation and condemnation.

D. Disposal of unneeded easement.

.02 Objectives. The objective is to provide uniform, Bureauwide guidance for the acquisition of lands and interests in lands necessary for management of public lands.

.03 Authority. BLM authority is derived from the sources listed below: (See Appendix 1 for more details.)

A. Annual Appropriations Acts.

B. Alaska National Interest Lands Conservation Act of December 2, 1980. (ANILCA). (16 U.S.C. Sec. 3192; 43 U.S.C. Sec. 1613).

C. The Federal Land Policy and Management Act of October 21, 1976. (FLPMA). (43 U.S.C. Secs. 1715, 1737, 1762).

D. Uniform Relocation Assistance and Real Property Acquisition Policies Act of January 2, 1971. (42 U.S.C. Sec. 4601 et seq.)

E. King Range National Conservation Area Act of October 21, 1970, as amended (16 U.S.C. Secs. 460y, et seq.).

F. National Trails System Act of October 2, 1968, as amended (16 U.S.C. Secs. 1241 et seq.).

G. Wild and Scenic Rivers Act of October 2, 1968, as amended (16 U.S.C. Secs. 1271 et seq.).

H. The Federal-Aid Highway Act of October 23, 1962, as amended (23 U.S.C. Sec. 214).

I. Timber Access Road Act of July 26, 1955, (69 Stat. 374).

J. The Sustained Yield Act of August 28, 1937, (43 U.S.C. Secs. 1181a et seq.)

K. Soil Conservation and Domestic Allotment Act of April 27, 1935, as amended (16 U.S.C. Secs. 590a *et seq.*)

L. Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. Secs. 315 *et seq.*)

M. Declaration of Taking Act of February 26, 1931, (40 U.S.C. Secs. 258a *et seq.*)

N. Condemnation Act of August 1, 1888, as amended (40 U.S.C. Sec. 257).

O. 43 Code of Federal Regulations.

1. Group 2100 Acquisitions.

   a. Part 2110 Gifts.
   b. Part 2120 Leases.
   c. Part 2130 Acquisition of Lands or Interests in Lands by Purchase or Condemnation.

   d. Part 2200 Exchanges.

2. Group 2800 Rights-of-Way.

   a. Part 2800 Rights-of-Way, Principles, and Procedures.

P. 41 Code of Federal Regulations. (FPMR 101 and IPMR 114 Acquisition of excess real property) lease special purpose space.

.04 Responsibility.

A. Director, Associate Director, and Deputy Director for Lands and Renewable Resources, acting under broad Departmental guidance, assure compliance with statutory authorities and Departmental policies.

B. Assistant Director, Land Resources through the Chief, Division of Rights-of-Way, is responsible for the overall policies and procedural guidance for the acquisition of lands and interests in lands by gift (donation), lease, purchase, condemnation, transfer of excess property, the acquisition portion of exchanges, agreements (cooperative or reciprocal), and relocation assistance.

C. State Directors and District Managers, within their delegated areas, are responsible for uniformly implementing and carrying out the guidance and instruction contained in this Manual, implementing and managing the acquisition program in their State or District, programming and budgeting funds, issuing local instructions, maintaining program quality control, and training personnel to become proficient in evaluating, processing, and negotiating acquisitions.

.05 References.

A. BLM Courses 2100-1, 2100-2, 2100-3 and 2100-4 training books.

B. Administering the Uniform Relocation Assistance Program, IRWA.

C. Standards for the Preparation of Title Evidence in Land Acquisition, Department of Justice.

D. A Procedural Guide for the Acquisition of Real Property by Governmental Agencies, Department of Justice.

.06 Policy. It is the policy of the Bureau to:

A. Acquire lands and interests in lands needed to manage, protect, develop, maintain, and use resources on public land and further provide access for public use and enjoyment of such lands (as exemplified by perpetual access to lands having outstanding recreational value); provided such acquisitions are within the limitations of applicable authorities and available funds and are in conformity with land-use plans that apply to the area involved.

B. Acquire that real property necessary for effective program operation. Before acquisition, BLM personnel must determine whether requirements may be met by improved utilization of present holdings; whether other suitable existing Federal holdings are available, including possible joint-use agreements; or whether requirements may be met by obtaining excess property from other agencies.

C. Obtain legal access for its operations through negotiations with landowners as expeditiously as possible. While BLM employees have a right to enter the public land and manage uses on public land, they do not have an unrestricted right to cross private lands or use private roads to reach the public land. Negotiations must be carried out in an efficient, courteous, and fair manner with "face-to-face" meetings with the owners wherever possible. All negotiation shall comply with Title III of the Uniform Real Property Acquisition Policies Act of 1970.

D. Purchase lands or interests in lands through the use of written instruments (deeds), only after final review and approval for technical adequacy and compliance with applicable standards by the respective State Office Staff.

E. Secure a written opinion of title from the appropriate Regional or Field Solicitor as to the sufficiency of the title to the land or interest therein that is being acquired by the United States through purchase, exchange, or donation prior to making payment to the grantor. The title evidence must assure that proper owners are identified and unacceptable title encumbrances must be removed from the title. Managers must comply with 40 U.S.C. §255 which states in part:

> Unless the Attorney General gives prior written approval of the sufficiency of the title to land for the purpose for which the property is being acquired by the United States, public money may not be expended for the purchase of the land or any interest therein.

F. Use eminent domain only after diligent negotiations to purchase have failed, when an emergency situation exists, or when a landowner is unable to convey a clear title.

G. Accept gifts (donations) or bequests of lands or interest in lands which will help consolidate and facilitate the management, use, and protection of the public lands and its resources. This must be a bonafide, landowner-initiated action.

H. Dispose of unneeded easements under procedures delegated to the BLM from GSA to the underlying landowner when it is determined that such easements are no longer needed by the United States and that the United States has received fair market value.

I. Use cost effective alternatives to the direct purchase of private lands whenever possible and only acquire the minimum interest necessary to meet the management objectives when using the Federal portion of the Land and Water Conservation Fund.

Statutory Authority Excerpts

1. Soil Conservation and Domestic Allotment Act of April 27, 1935 (16 U.S.C. Secs. 590a et seq.) provides for soil and moisture conservation. Section one of the Act, 16 U.S.C. Sec. 590a, provides in part:

> [T]he Secretary of Agriculture . . . is authorized...
> (4) To acquire lands, or rights or interests therein, by purchase, gift, condemnation, or otherwise, whenever necessary for the purposes of this chapter.

Functions of the Soil Conservation Service in the Department of Agriculture with respect to soil and moisture conservation operations on BLM lands were subsequently transferred to the Department of the Interior by 1939 Reorganization Plan No. IV (54 Stat. 1234), June 30, 1940.

2. Timber Access Road Act of July 26, 1955 (69 Stat. 374), provides the basic authority for the acquisition of timber access roads and rights-of-way, and reads as follows:

> That the Secretary of the Interior may acquire rights-of-way and existing connecting roads adjacent to public lands whenever he determines that such acquisition is needed to provide a suitable and adequate system of timber access roads to public lands under his jurisdiction.
>
> Sec. 2. For the purpose of this Act, the term "public lands" includes the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands in Oregon.

3. Federal Land Policy and Management Act of 1976 (FLPMA). Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. Secs. 1715, 1737, 1748, and 1762). Sections of this Act that are pertinent to the acquisition of lands or interests in lands and the acceptance of donated property (real, personal, or mixed) are as follows:

A. Section 205. (43 U.S.C. Sec. 1715). Provides the BLM with the basic authority to acquire lands or interests therein where such acquisitions are consistent with the Departmental mission and with applicable land use plans. The power of eminent domain is limited to certain specified situations in the acquisition of land. Pertinent parts read as follows:

> (a) Notwithstanding any other provisions of law, the Secretary, with respect to the public lands and the Secretary of Agriculture, with respect to the acquisition of access over non-Federal lands to units of the National Forest System, are authorized to acquire pursuant to this Act by purchase, exchange, donation, or eminent domain, lands or interests therein: Provided, That with respect to the public lands, the Secretary may exercise the power of eminent domain only if necessary to secure access to public lands and then only if the lands so acquired are confined to as narrow a corridor as is necessary to serve such purpose . . . .
>
> (b) Acquisitions pursuant to this section shall be consistent with the mission of the department involved and with applicable departmental land-use plans.

B. Section 307. (43 U.S.C. Sec. 1737) Authorizes the Secretary of the Interior to enter into cooperative agreements, conduct public land use investigations, accept gifts of land or contributions of money for public land administration, and carry out certain other administrative matters on Bureau-administered lands and reads in part:

> (c) The Secretary may accept contributions or donations of money, services, and property, real, personal, or mixed, for the management, protection, development, acquisition, and conveying of the public lands, including the acquisition of rights-of-way for such purposes . . . Moneys received hereunder shall be credited to a separate account in the Treasury and are hereby authorized to be appropriated and made available until expended. . . .

C. Section 318. (43 U.S.C. Sec. 1748) Authorizes the Secretary of the Interior to use the Land and Water Conservation Fund (L&WCF) and states in part as follows:

> (d) In exercising the authority to acquire by purchase granted by Section 1715(a) of this title, the Secretary may use the Land and Water Conservation Fund to purchase lands which are necessary for proper management of public lands which are primarily of value for outdoor recreation purposes.

D. Section 502. (43 U.S.C. Sec. 1762) Authorizes the Secretary of the Interior to provide for the acquisition, construction, and maintenance of roads for harvesting timber through the use of Cost-Share Road Agreements.

4. Federal-Aid Highway Act of October 23, 1962 (76 Stat. 1147; 23 U.S.C Sec. 214). This Act authorizes appropriations for "public lands development roads and trails" which are defined at 23 U.S.C. Sec. 101 as, "those roads or trails which the Secretary of the Interior determines are of primary importance for the development, protection, administration, and utilization of public lands and resources under his control."

5. Wild and Scenic Rivers Act of October 2, 1968, as amended (16 U.S.C. Secs. 1271 et seq.),. This Act preserves certain selected rivers of the United States in free-flowing condition so that they and their immediate environments will be protected for the benefit and enjoyment of present and future generations.

Section 6(a) and (b) of the Act (16 U.S.C. Sec. 1277) read as follows:

> (a) The Secretary of the Interior and the Secretary of Agriculture are each authorized to acquire lands and interests in land within the authorized boundaries of any component of the national wild and scenic rivers system designated in section 1274 of this title, or hereafter designated for inclusion in the system by Act of Congress, which is administered by him, but he shall not acquire fee title to an average of more than 100 acres per mile on both sides of the river. Lands owned by a State may be acquired only by donation, and lands owned by an Indian tribe or a political subdivision of a State may not be acquired without the consent of the appropriate governing body thereof as long as the Indian tribe or political subdivision is following a plan for management and protection of the lands which the Secretary finds protects the land and assures its use for purposes consistent with this chapter. Money appropriated for Federal purposes from the Land and Water Conservation Fund shall, without prejudice to the use of appropriations from other sources, be available to Federal departments and agencies for the acquisition of property for the purposes of this chapter.
>
> (b) If 50 per centum or more of the entire acreage within a federally administered wild, scenic or recreational river area is owned by the United States, or by the State or States within which it lies, or by political subdivisions of those States, neither Secretary shall acquire fee title to any lands by condemnation under authority of this chapter. Nothing contained in this section, however, shall preclude the use of condemnation when necessary to clear title or to acquire scenic easements or such other easements as are reasonably necessary to give the public access to the river and to permit its members to traverse the length of the area or of selected segments thereof.

6. National Trails System Act of October 2, 1968, as amended (16 U.S.C Secs. 1241 et seq.). This Act provides the means for developing a system of National recreation and scenic trails. It designates the Appalachian Trail and Pacific Crest Trail as initial components of the National Trails System and prescribes the methods by which, and standards according to which, additional components may be added to the system.

Section 7(d) of the Act (16 U.S.C. Sec. 1246(d)) reads as follows:

> Within the exterior boundaries of areas under their administration that are included in the right-of-way selected for a national recreation, national scenic, or national historic trail, the heads of Federal agencies may use lands for trail purposes and may acquire lands or interests in lands by written cooperative agreement, donation, purchase with donated or appropriated funds or exchange.

Section 7(f)(2) of the Act (16 U.S.C. Sec. 1246(f)(2) reads as follows:

> In acquiring lands or interests therein for a National Scenic or Historic Trail, the appropriate Secretary may, with consent of a landowner, acquire whole tracts notwithstanding that parts of such tracts may lie outside the area of trail acquisition. In furtherance of the purposes of this chapter, lands so acquired outside the area of trail acquisition may be exchanged for any non-Federal lands or interests therein within the trail right-of-way, or disposed of in accordance with such procedures or regulations as the appropriate Secretary shall prescribe, including: (i) provisions for conveyance of such acquired lands or interests therein at not less than fair market value to the highest bidder, and (ii) provisions for allowing the last owners of record a right to purchase said acquired lands or interests therein upon payment or agreement to pay an amount equal to the highest bid price. For lands designated for exchange or disposal, the appropriate Secretary may convey these lands with any reservations or covenants deemed desirable to further the purposes of this chapter. The proceeds from any disposal shall be credited to the appropriation bearing the costs of land acquisition for the affected trail.

7. The King Range Act of October 21, 1970 (16 U.S.C. Secs. 460y et seq.). This law establishes boundaries of the King Range National Conservation Area in the State of California and authorizes the Secretary of the Interior to consolidate and manage the public lands within the area with the purpose of conserving and developing, for the use and benefit of the people of the United States, the lands and other resources therein under a program of multiple use and sustained yield.

Pertinent sections of the Act read as follows:

> Sec .5, (16 U.S.C. Sec. 460y-4). The Secretary is authorized ...

> (2) to acquire by donation, by purchase with donated funds or with funds appropriated specifically for that purpose, or by exchange, any land or interest in land within the area described in section 460y-8 of this title which the Secretary, in his judgment, determines to be desirable for consolidation of public lands within the Area in order to facilitate efficient and beneficial management of the public lands or otherwise to accomplish the purposes of sections 460y to 460y-9 of this title: Provided, That the Secretary may not acquire, without the consent of the owner, any such lands or interest therein which are utilized on October 21, 1970, for residential, agricultural, or commercial purposes so long as he finds such property is devoted to uses compatible with the purposes of sections 460y to 460y-9 of this title. Any lands or interests in lands acquired by the United States under the authority of this section shall, upon acceptance of title, become public lands, and shall become a part of the area subject to all the laws and regulations applicable thereto.
>
> Sec. 9(b) (16 U.S.C. Sec. 460y-8). In addition to the lands described in subsection (a) of this section, the Secretary is authorized to acquire such land outside the area but in close proximity thereto as is necessary to facilitate sound management. Acquisition hereunder shall, however, not exceed three hundred and twenty acres and shall be limited to such purposes as headquarters facility requirements, ingress and egress routes and, where necessary, to straighten boundaries or round out acquisitions.

8. Condemnation. Eminent domain is the power of the sovereign to take all or any part or any interest in property for public use without the owner's consent. This power is exercised through the legal process of condemnation. It should be noted that of the statutes cited above as authorities for acquisitions, not all are necessarily authorities for acquisition by condemnation. The Regional or Field Solicitor should be consulted as to the proper statutory authority when BLM contemplates a condemnation action. Eminent domain and condemnation are inherent in sovereignty and conditioned by the just compensation clause of the Fifth Amendment of the Constitution of the United States which reads in part:

> . . . nor shall private property be taken for public use, without just compensation.

The Federal power of eminent domain is not dependent on State authority, nor can the exercise of the power be limited in any manner by the State. Such power is delegated to the executive by several acts of Congress described as follows:

A. The Condemnation Act of August 1, 1888, as amended (40 U.S.C. Sec. 257) provides as follows:

> In every case in which the Secretary of the Treasury or any other officer of the Government has been, or hereafter shall be, authorized to procure real estate for the erection of a public building or for other public uses, he may acquire the same for the United States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so, and the Attorney General of the United States, upon every application of the Secretary of the Treasury, under this section and section 258 of this title, or such other officer, shall cause proceedings to be commenced for condemnation within thirty days from receipt of the application at the Department of Justice.

B. The Declaration of Taking Act of February 26, 1931 (40 U.S.C. Sec. 258a), provides in part:

> In any proceeding in any court of the United States outside of the District of Columbia which has been or may be instituted by and in the name of and under the authority of the United States for the acquisition of any land or easement or right-of-way in land for the public use, the petitioner may file in the cause, with the petition or at any time before judgment, a declaration of taking signed by the authority empowered by law to acquire the lands described in the petition, declaring that said lands are thereby taken for the use of the United States . . . .

9. The Act of August 28, 1937 (43 U.S.C. Secs. 1181a et seq.) is often referred to as the "Sustained Yield Act" or "O. and C. Act." The Act provides that such portions of the Revested Oregon and California Railroad Grant lands (O. and C. Lands) and Reconveyed Coos Bay Wagon Road Grant Lands (CBWR Lands) as are or may be classified as timber lands shall be managed:

> ". . . for permanent forest production, and the timber thereon shall be sold, cut and removed in conformity with the [principle] of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities . . . ." (43 U.S.C. Sec. 1181a).

NOTE: Authority for acquisition of rights-of-way and roads adjacent to such Federal lands in western Oregon also may be derived in part from the Annual Appropriations Act.

An example of language contained in the annual Appropriation Act for the Oregon and California Grant Lands reads as follows:

"For expenses necessary for management, protection, and development of resources and for construction, operation, and maintenance of access roads, reforestation, and other improvements on the revested Oregon and California land-grant counties of Oregon, and on adjacent rights-of-way; and acquisition of lands or interests therein including existing connecting roads on or adjacent to such lands; . . . ."

Since this authority is contained in an Annual Appropriation Act, it expires at the end of each fiscal year. No purchases may be made from a new appropriation until it has been signed into law. A continuing resolution, which is commonly used to bridge the time frame between an expired appropriation and the new Act, usually covers only operations at the same level as that of the previous year. Unless specifically authorized, acquisition of property has been determined not to be an operation for purposes of a continuing resolution.

10. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of January 2, 1971 (42 U.S.C. Secs. 4601 et seq). This act has four basic provisions related to Federal acquisitions. It (1) provides policy for the acquisition of lands and interests in lands by the Federal Government; (2) provides policy for dealing with persons who are displaced because of an approved project of the United States requiring the acquisition of lands or interests in land; (3) provides for reimbursement for expenses incidental to the conveyance of lands or interests in lands, (4) provides authority for persons to file suit against the United States in the event the United States has taken their property for public use without the payment of just compensation.

11. Appropriation Acts. When Congress appropriates money for projects, there is the implied authority to acquire lands or interests in lands necessary to complete the project. If the authorized project requires access rights across non-Federal land to reach the project area, the inference is that, unless specifically precluded by Congress, the project agency has the authority to acquire needed property rights through purchase or condemnation. Where specific statutory authorization does not exist, the courts have accepted as the basis for acquisition the listing of the project as a "line item" in an appropriation statute. A line item in the Department and/or BLM's budget or part of the Congressional Record may also be accepted.

12. Section 1302 of the Alaska National Interest Lands Conservation Act of December 2, 1980. (16 U.S.C. Sec. 3192) grants the authority to the Secretary of the Interior to acquire certain private lands within the boundaries of any conservation system unit other than National Forest Wilderness.

Section 1302 reads in part:

a. General Authority. - Except as provided in subsections (b) and (c) of this section, the Secretary is authorized, consistent with other applicable law in order to carry out the purposes of this Act, to acquire by purchase, donation, exchange, or otherwise any lands within the boundaries of any conservation system unit other than National Forest Wilderness.

* * *

(i)(1) [Donation or exchange. -] The Secretary is authorized to acquire by donation or exchange, lands (A) which are contiguous to any conservation system unit established or expanded by this Act, and (B) which are owned or validly selected by the State of Alaska.

13. Administrative Guides. Certain manuals and handbooks by other U.S. agencies are source documents for many procedures in acquisitions. Examples are:

A. OMB Circular A-104 "Comparative Cost Analysis for Decisions to Lease or Purchase General Purpose Real Property."

B. Department of Justice Pamphlet " A Procedural Guide for Acquisition of Real Property by Government Agencies."

14. Functions of Solicitor's Office and Department of Justice Related Authorities. The BLM does not have the authority to perform certain critical functions necessary to complete the acquisiton process. These functions are vested in the Department of Justice and the Solicitor's Office of the Department of the Interior. The functions that these offices perform are essential to the land acquisition program of the Bureau.

A. Approval of Title. The BLM does not have the authority to approve title with respect to purchase and condemnation acquisition transactions. This authority has been lodged in the Attorney General (40 U.S.C. Sec. 255) and, insofar as the Department is concerned, has been delegated to the Solicitor, with certain stated exceptions. The Solicitor in turn has redelegated this authority to the Associate Solicitors, Regional Solicitors, and Field Solicitors. The exceptions to this delegation are contained in Attorney General Order 440-70, 35 F.R. 16084 (1970); Ass't. Atty. Gen. redelegation, dated October 2, 1970, as amended; 209 DM3; Solicitor's Regulations, Chapter 6.

B. Acquisition Forms. The authority to approve deed forms is vested in the Solicitor (see 109 DM 3.1), 200 DM 1.6C. and 209 DM 3). The forms found in the BLM Handbooks have been approved by the Solicitor, thus any significant changes must be approved through the appropriate State Office and/or Solicitor's Office.

C. Condemnation. The exercise of the power of eminent domain is a Department of Justice function once the appropriate Solicitor's Office has signed the Declaration of Taking. The BLM State Director may recommend that condemnation action be filed in the court, but the Solicitor must sign the Declaration of Taking and the Department of Justice must file the action in court.

1. Solicitor. On April 15, 1976, the delegated authority of the Solicitor as stated in Section 209.3.2 of the Departmental Manual was redelegated to each Associate Solicitor and Regional Solicitor. Pertinent parts of Section 209.3.2 which have been redelegated read as follows:

> (5) When acting upon a proposal by a bureau, to acquire real estate for the United States by condemnation pursuant to section 1 of the Act of August 1, 1888, as amended (40 U.S.C. Sec. 257) whenever in the opinion of the Solicitor it is necessary or advantageous to the Government to do so and to submit to the Attorney General of the United States applications for the institution of proceedings for condemnation.
>
> (6) Under Section 1 of the Act of February 26, 1931 (40 U.S.C., Sec. 258a), to sign declarations of taking; . . .

2. Department of Justice. Once a condemnation case is filed with the Department of Justice (DOJ), DOJ assumes jurisdiction of the case and BLM's role becomes advisory. All authority and responsibility for concluding the case rests with DOJ, therefore, any contacts concerning the case must be referred through the Solicitor's Office to the appropriate DOJ official

15. Repealed Acquisition Authorities. A number of acquisition authorities relied on by the BLM were repealed by FLPMA. Although the authorities are no longer in effect, acquisitions perfected under these authorities are nonetheless valid. The following is a list containing laws or portions of laws that are repealed and will be useful as a reference aid.

A. Public Land Administration Act, Act of July 14, 1960 (43 U.S.C. Sec. 1364). This act was repealed in its entirety. Similar language is contained in Section 307(c) of FLPMA.

B. Sec. 315g of the Taylor Grazing Act, Act of June 28, 1934. This portion of the act, which authorized the Secretary of the Interior to accept land as a gift and to enter into land exchanges, was repealed by FLPMA. Such authority is now exercised in accordance with Titles II and III of FLPMA.

C. An Act to Authorize the Secretary of the Interior to Reimburse Owners of Land Required for Development, May 29, 1958 (43 U.S.C. Secs. 1231-1234). This act, which dealt with reimbursing owners of land required for development for their moving expenses and for other purposes, was repealed by Section 220 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1903).

TITLE 5400 - LANDOWNERSHIP

CHAPTER 5460 - RIGHT-OF-WAY ACQUISITION

This chapter concerns:

1. Acquisition of rights-of-way for all improvements, such as roads, trails, telephone lines. powerlines, pipelines, ditches, and fences over private or other lands not administered by the Forest Service.

2. Cooperation with public road agencies in obtaining mutually satisfactory jurisdictional status for roads needed to serve the National Forests and public service traffic.

3. Road construction and use agreements with other landowners or land-administering agencies.

The procedures and fiscal and legal limitations covered apply generally to all rights-of-way acquisitions by the Forest Service; however, many of the conditions are specific to road rights-of-way and must be modified for other uses.

Specific information about procedures and forms are in FSH 5409.17, Rights-of-Way Acquisition Handbook.

5460.1 - Authority

5460.11 - Road and Trail Right-of-Way Acquisition. Section 205 of the Federal Land Policy and Management Act of 1976 authorizes the Secretary of Agriculture to acquire access over non-Federal lands to units of the National Forest System by purchase, exchange, donation, or use of eminent domain.

5460.2 - Objectives

1. To acquire, across non-National Forest land, road and trail rights-of-way that are adequate for the protection, administration, and utilization of the National Forests. Where compatible with National Forest needs, the rights-of-way should also accommodate the utilization and development of resources in other ownerships upon which communities within or adjacent to the National Forests depend.

2. To acquire such rights-of-way in time to meet road and trail construction and resource development program schedules.

3. To acquire all interests to permit use of road and trails to meet the multiple use and sustained yield objectives of the National Forests.

5460.3 - Policy

1. Acquire all interests needed for planned and foreseeable future uses during the initial acquisition.

2. Acquire rights-of-way in perpetuity and to accommodate all forms of multiple-use traffic unless the forest plan indicates that full use is not required.

3. Recommend condemnation when negotiations fail to secure in a timely manner the rights-of-way needed.

4. Insofar as it is compatible with National Forest management objectives, assist and cooperate with private landowners in the acquisition of rights-of-way needed to develop access for private lands access in conjunction with National Forest access.

5. Acquire sufficient interests in rights-of-way for roads expected to receive significant non-Forest Service use to permit the appropriate public road agency to accept jurisdiction of the road.

6. Consider acceptance of temporary agreements or use rental arrangements only where there is an immediate need for temporary access for limited purposes that can be economically met by such procedure, and the foreseeable need of the United States does not justify the expenditure necessary to provide a permanent road or trail.

7. Acquire rights-of-way with the least impact on private lands crossed insofar as economically and environmentally feasible.

5460.4 - Responsibility

5460.41 - Chief. The Chief must sign all condemnation recommendations to the Secretary.

Exhibit 1

BLM-FS Interagency Right-of-Way and Road Use Agreement

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United States Department of Agriculture
Forest Service

United States Department of the Interior
Bureau of Land Management

I. Purpose. This agreement provides procedures for granting and acquiring property rights by each agency from the other necessary for road use, construction, improvement, maintenance, and transferring jurisdiction of roads.

For the purpose of land management under the principles of multiple use, including the removal of forest and mineral products, the procedures set out herein are established for the use of roads and lands under the jurisdiciton of the Forest Service and the Bureau of Land Management.

II. Authority.

A. Bureau of Land Management

1. The Federal Land Policy and Management Act of 1976, (90 Stat. 2766; 43 U.S.C. 1737) and (90 Stat. 2781; 43 U.S.C. 1767).

B. Forest Service

1. Organic Administration Act of 1897 (30 Stat. 34 as supplemented and amended; 16 U.S.C. 551) and the Federal Land Policy and Management Act of 1976 (90 Stat. 2781; 43 U.S.C. 1767).

III. Definitions. The following definitions are hereby adopted:

A. "The Agencies" means the Forest Service and the Bureau of Land Management.

B. "Road" means an existing road or interest therein on lands or easements administered by one of the agencies which the other agency needs to use in carrying out its functions; provided, the interest owned allows either qualified or unqualified use by the other agency.

C. "Management" means any of the multiple use activities on the lands under the jurisdiction of each agency including but not limited to the harvesting and removal of forest and mineral products.

D. "Principal sale" means that timber sale to be served by the road, as opposed to the right-of-way timber on that road.

E. "Licensee" means any person who is authorized to remove mineral or forest products in commercial quantities from lands administered by either agency.

F. "Road construction" means the locating, relocating, clearing, constructing, or reconstructing of any road under the jurisdiction of either agency.

Exhibit 1--Continued

C. "Road improvement" means the improvement, widening, surfacing, or the locating of additional structures upon any existing road.

IV. Existing Roads.

Roads that are now existing or hereafter constructed or acquired are available for joint use as follows:

A. Road jurisdiction will not transfer.

1. Each agency is hereby authorized to use such roads in the exercise of its administrative function.

2. Contractors or permittees of the agencies shall be and are hereby authorized to use such roads for the removal of forest or mineral products upon the execution of a license agreement between the contractors or permittees and the agency having jurisdiction or control of the roads to be used. The form of such license agreement is attached hereto and designated Exhibit A and made a part hereof by reference. Upon written request, such license agreements shall be furnished unsigned to the requesting agency prior to advertising, sale, or the removal of timber or mineral materials.

3. If the grants to the United States will permit, licensees of each agency shall be authorized to use roads constructed or controlled by third parties. Such use shall be subject to and limited by the terms and conditions of the agreements or grants to the United States.

Where there is an unliquidated collection right against the United States timber or mineral products on such a road, the license agreement issued by one agency to the timber or mineral purchaser of the other will contain a provision requiring payments as authorized by the terms of the collection right or a higher payment as agreed to by the two agencies.

4. Nothing in this agreement shall have the effect of curtailing or limiting the administrative use of the agency having the primary administrative control, which control must remain paramount in the event of a conflict.

5. It is understood that if the rights of one agency across private lands are inadequate for the use of the other agency, the latter may acquire additional rights in the name of the United States.

6. Upon completion of the sale or contract for which the license is issued and all requirements of the license agreement have been satisfied, the requesting agency shall notify the Licensor that the bond may be released.

B. Road jurisdiction will transfer.

1. If it is agreed to by both parties that the transfer of road jurisdiction is desirable and will result in a more reasonable, manageable transportation system, the procedure set forth under Section V.A. - "Construction or Transfer of Roads" shall be followed to accomplish the transfer.

Exhibit 1--Continued

C. Road Improvement.

In the event one agency seeks the use of a road under the jurisdiction of the other that will require improvement to serve the proposed use, the two agencies will confer at the annual meeting, or at any other time as necessary. Transfer of jurisdiction will be considered, particularly where mutual transportation planning indicates such action. If transfer is not appropriate, the agencies will determine which agency will be responsible for improving the road. The improving agency will be permitted to recover a portion of its investment from any subsequent third party, non-United States users.

If transfer is determined to be appropriate, the agency to which the road is to be transferred shall file an application as set forth in Section V.A. of this agreement.

Any road improvement to be made by one agency upon a road under the jurisdiction of the other agency shall be made pursuant to the written application (Exhibit D - original and one copy) by the constructing agency. The agency having jurisdiction over the road will review the application, and, if in order, the approving agency will execute it and forward a copy to the requesting agency. Any conditions and standards in the approval shall be inserted in the License Agreement to be executed by the licensee and the agency having jurisdiction over the road.

D. Road Maintenance.

Each agency or its licensee shall be responsible for performing the work to maintain the road or for payment of pro rata maintenance expense. The pro rata maintenance expense shall be determined by the total use of the road or part thereof by the agencies. Each year, the agencies shall mutually agree, insofar as is possible, upon the required maintenance and resurfacing work to be done upon the particular road(s) involved. Agency expenditures for the benefit of the other agency's use shall be reimbursed by the benefiting agency under the Act of June 30, 1932, as amended (31 U.S.C. 686), or it shall make other arrangements to provide funds to meet such expense. Maintenance work shall include such work as is reasonably necessary to place the particular road in a satisfactory condition for use, to keep it in such condition, and to reasonably protect said road from weather conditions, and may include blading and shaping, watering or oiling, ditching, repair of drainage improvements, slide removal and such other measures as may be required by the agency having jurisdiction. Upon discontinuing use of a road or any portion of a road, the road shall be placed, as a minimum requirement, in as good a condition as it was prior to commencement of use.

E. Road Use Rules.

Roads that are jointly used shall be subject to reasonable road use rules to be administered and enforced by the agency having jurisdiction. Both agencies shall jointly make a periodic study and review of such roads. Road rules shall be uniformly applicable to all road users, and may include, but not be limited to, matters of speed, load limits, fire and safety equipment, and road closures. The road rules will be posted and made available to the road user.

Exhibit 1--Continued

V. Construction or Transfer of Roads

A. Construction.

It is understood that prior to construction or transfer of a road by or for one agency on lands under the jurisdiction of the other, status will be cleared through the appropriate office of the administering agency. Concurrently therewith, an application in the form of Exhibit B shall be completed by the constructing agency and the original and two copies submitted to the appropriate Forest Supervisor or District Manager with the required attachments. After review and any necessary consultation, the administering agency will execute a Right-of-Way Reservation in the format of Exhibit C and forward the original to the constructing agency.

B. Timber.

The clearing limits on each side of the road centerline shall be designated by the constructing agency. Unless otherwise agreed upon, such timber shall be cruised, appraised and sold by the agency having jurisdiction of the timber.

The following methods may be used for timber disposal:

1. The agency having jurisdiction of the right-of-way timber may sell it and have it removed prior to road construction.

2. The party constructing the road may be required to buck the timber into standard log lengths and deck the logs at locations designated along the right-of-way by the agency having jurisdiction of the timber.

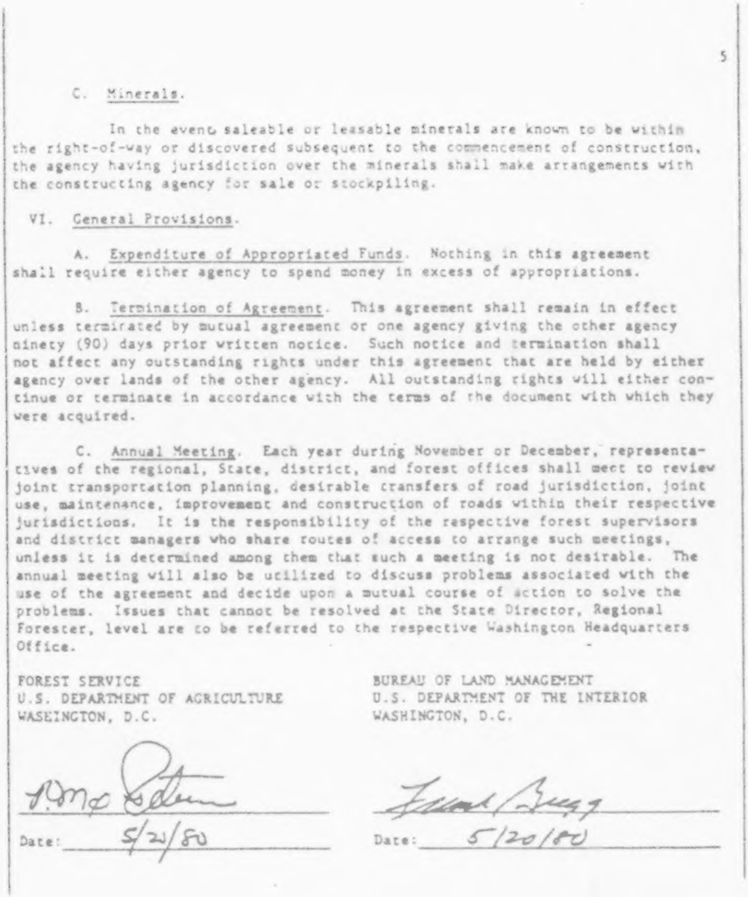
3. The party constructing the road may be required to buy the timber from the agency having jurisdiction of the timber prior to cutting the timber. The timber will be sold lump sum based on the cruise and appraisal of that agency. The appraisal shall be on a stumpage basis with no road construction cost allowance.

4. Where the purchaser of a principal sale is to construct the road, the purchaser may be required to buy the right-of-way timber. Such timber shall be appraised by the agency having jurisdiction of the timber. Appraisal shall be on a stumpage basis with no road construction cost allowance. Following the receipt of bids on the principal sale, the sale price for right-of-way timber shall be determined by increasing the appraised or advertised price of the right-of-way timber, species by species, by the monetary difference between the appraised or advertised and bid prices of the principal sale.

When method 3 or 4 is used, the necessary timber sale contracts shall be furnished to the constructing agency prior to the advertising of the constructing agencies road contract, timber, or mineral products sale.

In the event that the road is constructed by the United States through a road contract or by force account, the agency having jurisdiction of the timber will specify the method of disposal after consultation with the constructing agency.

Exhibit 1--Continued



C. Minerals.

In the event saleable or leasable minerals are known to be within the right-of-way or discovered subsequent to the commencement of construction, the agency having jurisdiction over the minerals shall make arrangements with the constructing agency for sale or stockpiling.

VI. General Provisions.

A. Expenditure of Appropriated Funds. Nothing in this agreement shall require either agency to spend money in excess of appropriations.

B. Termination of Agreement. This agreement shall remain in effect unless terminated by mutual agreement or one agency giving the other agency ninety (90) days prior written notice. Such notice and termination shall not affect any outstanding rights under this agreement that are held by either agency over lands of the other agency. All outstanding rights will either continue or terminate in accordance with the terms of the document with which they were acquired.

C. Annual Meeting. Each year during November or December, representatives of the regional, State, district, and forest offices shall meet to review joint transportation planning, desirable transfers of road jurisdiction, joint use, maintenance, improvement and construction of roads within their respective jurisdictions. It is the responsibility of the respective forest supervisors and district managers who share routes of access to arrange such meetings, unless it is determined among them that such a meeting is not desirable. The annual meeting will also be utilized to discuss problems associated with the use of the agreement and decide upon a mutual course of action to solve the problems. Issues that cannot be resolved at the State Director, Regional Forester, level are to be referred to the respective Washington Headquarters Office.

FOREST SERVICE
U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C.

Date: 5/21/80

BUREAU OF LAND MANAGEMENT
U.S. DEPARTMENT OF THE INTERIOR
WASHINGTON, D.C.

Date: 5/20/80

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March 12, 1986

To: Honorable Malcolm Wallop
Energy and Natural Resources Committee
Subcommittee on Public Lands
Attn: Tony Bevinetto

From: Adela Backiel Adela Backiel
Analyst in Natural Resources Policy
Environment and Natural Resources Policy Division

Subject: Public Access Across Private Lands to Fragmented Federal Lands

You requested information and analysis of the current laws, regulations, and policies relating to access to lands managed by the Bureau of Land (BLM) Management and the USDA Forest Service. The synopsis of laws and regulations relating to this topic is being done by the American Law Division, and will be sent to you under separate cover.

This memorandum discusses briefly the historical background to the issue of crossing private lands to reach public lands, the status of the BLM and Forest Service programs to acquire access to this land, and their progress towards improving the situation.

Generally, the extent of this access problem is not very well known. Access is usually judged by the number and quality of trails and roads that can be used to get to a parcel of land. When access to public lands can only be achieved by crossing private land, that access is often controlled by the private landowner, or the local agency who maintains the road. Unless legal access is obtained by the Federal government to cross these lands, private or county roads can be closed, and access to the public lands could be blocked.

The extent to which this problem exists is unclear. The Forest Service does not have overall estimates of inaccessible acreage on National Forest System lands. In the FY87 Budget Justification, BLM estimates that up to 25 million acres of public land may be inaccessible and that some 8,800 easements would be needed to solve the problem; at an average of 150 easements acquired each year, and with current funding levels, it would take BLM approximately 58 years to solve this problem. Although BLM shows easements being acquired each year, it would appear that the 25-million-acre figure, as it is used today, is only a rough approximation, not based on actual count and not adjusted as local situations change.

In addition, the agencies do not appear to have any evaluation of progress toward solution to this problem. For example, with BLM, the number of easements acquired is often used to judge the program wihout including how many acres those easements may access.

An accurate estimate of inaccesible acreage and progress towards decreasing the lack of access to these areas is difficult to establish and maintain. The difficulty arises because of the fluctuations in the number of road closures and openings, in defining what "adequate" access might mean for individual parcels of land, and the fact that many easements may be required to achieve access to one area if it must cross land held by several owners. Consequently, both agency programs are focused at the local management levels, and no centralized source of information or data is available. Although general policy guidance is provided from the national level through the laws and regulations, there does not seem to be a concerted national program that is dedicated to solving the problem. BLM is currently examining alternative ways to approach this issue, and whether it warrants program changes, but the results of this exam are not yet clear.

Both agencies assert that inadequate funding exists to acquire adequate access to all public land. And officials from both agencies seem to feel that the inadequate funding levels for acquiring access means that priority is likely to be given to roads that provide access to commodity uses rather than recreation uses.

Access by citizens to the lands held by the Federal government -- either for permanent transfer of ownership or, more recently, for use of the resources they harbor -- has been a matter of public interest throughout history, and is a continuing current policy issue today. In this context, the development of land survey, acquisition, and disposal patterns described below are of interest as they influence access to Federally owned lands.

Background

The Bureau of Land Management in the U.S. Department of the Interior, and the U.S. Forest Service in the Department of Agriculture, administer 533 million acres of land in the United States, or 73 percent of the 730-million-acre Federal land base. These Federal lands have been of vital importance in American history, adding strength and prestige to the Federal Government, as a source of revenue for schools, national defense, transportaion, and other State and national needs, and serving as a source of minerals, materials, recreation, and other resources. A prototypical land law enacted by the Continental Congress, the Northwest Ordinance of 1787, established the Federal system of rectangular survey of lands for disposal; a similar system was enacted by the new Congress.

After acquisition of what is basically the continental United States by the burgeoning new national government, a push began to put the land into private ownership of the citizens of the United States.

Many Federal laws encouraged and accelerated the settlement of the West by establishing definite Federal systems of disposal--for example, the Homestead Act of 1862 and the Desert Lands Entry Act of 1877.

Settlement and development of the West was also encouraged and accelerated through the granting of 128 million acres of Federal land to the railroads over approximately two decades, from 1850 to 1871. These Federal land grants to the railroads, in addition to State land grants, were "in addition to the public lands conveyed for use in right-of-way construction itself and consisted of blocks between 6 and 20 square miles alternating in checkerboard fashion along the railroad lines." 1/

Many of these railroad lands had valuable resources, including timber, and coal and iron deposits. Some of this land is still held by the railroad companies; much of the surface property has been sold to private individuals, with the railroad often retaining the subsurface mineral rights.

1/ Federal Aid to Railroads, Part III: Grants of Public Lands to Railroads. Jesse J. Friedman and Associates. Washington, D.C. March 1980. pgs. 3-5.

Partly as a result of abuses of disposal practices during the land settlement and development stage, a phase of reservation and management of Federal lands began. The first permanent Federal ownership of lands was through the establishment national parks in 1872, followed by establishment of forest reserves in 1897.

After the activity surrounding disposal and reservation of federal lands had subsided, there still remained over 180 million acres of "unreserved and unappropriated" land from the original public domain. This land was basically "left over" because it was not particularly well suited to private homesteading, or domestic crop or timber production. These lands were first grouped together under the administration of the Grazing Service in the Department of the Interior in the 1930's, which was later combined with the General Land Office to become the Bureau of Land Management (BLM). BLM land is essentially all the remaining public domain that was not settled under the various settlement and development laws, or granted to states or railroads.

The rectangular survey system, the checkerboard pattern of the railroad land grants, in addition to the fragmented land ownership pattern due to the settlement laws all contributed to the current public access problems. Since much of this land was never really intended to remain in public ownership, no provision was made to keep or provide access to these lands.

The public access question that historically was more often raised was one of assuring private access across Federal lands to private inholdings. In discussing how these private inholdings affect Federal management, parallels can be seen to the corrollary — how Federal lands surrounded by private lands are influenced by private land management. As discussed by Clawson and Held in The Federal Lands:

> Ownership of the intermingled private lands often brings substantial advantage to the owner who is in competition with other landowners in obtaining the use of federal land or its products. The owner of private land within a national park may possess a choice site for a dude ranch or a summer resort: the national park lies at his very door for the easy enjoyment of his guests. Grazing on both national forests and grazing districts is ususally easier and more profitable for the owner of nearby or intermingled land than for the distant landowner. Ownership of intermingled timbered lands and investment in a road system for their exploitation may be very advantageous to a lumberman bidding for the timber from the federal lands. There are times, indeed, when an owner of intermingled land may enjoy nearly all the advantages of ownership of the adjoining federal lands without the accompanying responsibilities and costs.
>
> These intermingled private lands can present the federal land administrator with serious problems. First of all, he must know where the boundaries of the private land are, in order to prevent trespass on the part of users of the federal land on the private land, and on the part of private landowners on the federal land. . . . The federal government has never denied access to the intermingled private lands, although it has presribed reasonable conditions for passage over its land; and it cannot deny the owner the right to use his land as he sees fit, although it may prevent him from injuring the federal land in the process. . . 2/

After World War II, the nation saw an increase in the demand for outdoor recreation, and people began to seek more remote areas, in addition to using the areas historically associated with hunting, fishing, and recreation. This increase in use caused some landowners to face problems in protecting their land that they had not experienced in the past. Some responded by restricting passage across their private lands to the public lands. Entry roads that had been historically open for use were blocked,

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2/ Clawson, Marion and Burnell Held. The Federal Lands. Resources for the Future. 1957. p. 50

and some landowners began to charge a fee for the privilege of geting to the public land.

The issue started to receive national attention during the late 1950s. 3/ Two State studies in 1959 had these estimates of acres blocked to free public access:

Colorado: 1.5 million acres (including 1 million acres of national forest lands)

Oregon: 500,000 acres of Federal lands (noted as being valuable for hunting and fishing)

Also in 1959, BLM "estimated that about 12.4 million acres of public domain lands lacked physical access (i.e. could not be reached easily by existing roads or trails), and that an additional 5.4 million acres (including most "checkerboard" lands) were closed off by operations of private lands."

This issue was also addressed as an outdoor recreation issue in the 1968 report of the Public Land Law Review Commission (PLLRC), "One third of the Nation's Land": 4/

> Recommendation 86: Congress should authorize a program for acquiring and developing reasonable rights-of-way across private lands to provide a more extensive system of access for outdoor recreation and other uses of the public lands.
>
> Our studies show that about 90 percent of the land area and nearly all of the streams and lakes on public lands are, as a matter of policy, open or available to the public for outdoor recreation of one kind

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3/ The information about the public access situation during the 1950s is from USDA Economic Research Service. Public Access to Public Domain Lands. Miscellaneous Publication No. 1122. U.S. Government Printing Office, Washington, D.C. 1968. pgs. 4-5.

4/ Public Land Law Review Commission. One Third of the Nation's Land. U.S. Government Printing Office. Washington, D.C. 1968.

> or the other. Yet, in many instances, the public is not able to gain entry to large areas of the public land. This is caused in part by the lack of clearly visible identification of public land boundaries; in part by the physical remoteness of public lands from established roads and highways; and in part of the the control of access and entry to public lands by private landowners.

The Commission urged Congress to provide both the legal authority and budgetary support to accomplish their recommendation.

In many ways the PLLRC served as a basis for enactment of the Federal Land Policy and Management Act (FLPMA) of 1976. While BLM had initially administered the "left over" lands until their final disposition could be made, FLPMA specifically defined Federal policy as one of retention of these lands. FLPMA, along with a few other laws, guide both BLM and Forest Service activities and policies relating to access to Federal lands. These laws and regulations will be discussed in more detail in a forthcoming memorandum to you from the CRS American Law Division.

The Current Situation

Although road or trail access to public lands across intermingled private lands has been a problem since the early days of public land management, its visibility as a national issue seems to go in cycles. Recently, Americans have found more leisure time, and more disposable income to spend on recreational activities; sportsmen and recreationists wanting to hunt, fish, and generally to enjoy these Federal lands have sometimes found access to some of these lands to be blocked. Because these are "public" lands, administered and managed by the Federal Government for the use and benefit of the nation's citizens, many people wanting to use "their" public land are disconcerted to find that some of it is inaccessible.

Most recently, improving access to these lands was cited as a major opportunity to improve the use of the recreation resource in the 1980 Assessment of the Forest and Range Land Situation in the United States, published pursuant to the Forest and Range Land Renewable Resources Planning Act of 1974.

Many observers claim that the problem has increased in the past decade or so. This claim seems to be substantiated by comparing the 1959 BLM estimate of blocked access which was approximately 17 million acres, with the current BLM figure from the 1987 Budget Justification which states that 25 million acres are inaccessible.

This increase may be caused by a recent shift in private landowners and their attitudes from that of general acceptance and encouragement of public road access to one of opposition to public crossing their private lands. As stated in a Forest Service issue brief on National Forest

Access Problems (attached to this memorandum as Appendix 1):

> Attitudes of private landowners toward roads across their lands have changed dramatically in recent years. In earlier days, most people who owned land within and adjacent to the National Forests wanted roads to be built. They wanted better access--to their own lands and to the Federal lands. Rights-of-way usually were granted without cost. Roads often were built across private land without easement--simply on oral or written permission. Today, for a variety of reasons, landowner attitudes toward roads across their lands are very different. Rights-of-way for new roads are difficult to obtain. Existing roads, for which no rights-of-way were obtained are often closed by the landowner.

The Forest Service suggests that some of the "variety of reasons" that precipitated this change in landowner attitude are:

- the change in character of rural landowners from resident ranchers to absentee owners
- people seeking isolation and privacy
- subdivision of large open ranches into small recreation oriented tracts
- changes in private land ownership from stock ranches to dude and hobby ranches.

Additional reasons for changes in status of road or trails can include the private landowner closing and posting an access point or road because of no deeded right-of-way owned by a local or Federal Government agency; sportsmen abuse of the private land; landowner fear of being held liable for personal injury while crossing their private land; landowner desire to monopolize use of adjacent public lands for essentially private use or use only by those who would pay the private landowner for access.

Closure of access roads is not just limited to private landowners and private roads, but can also be from local governments who are responsible for county roads which can provide access to public lands. Lack of adequate local funds for road maintenance or county residents voting to give priority regarding road status could influence these road closure decisions.

The Forest Service and BLM have recognized this problem not only to be one of access for the public, but also for management purposes, and have repeatedly tried to consolidate landholdings to form a pattern of landownership that is both logical and manageable.

The national programs for both agencies seem to focus on providing overall policy guidance through regulation and agency manuals, but do not, and cannot, deal with with individual problems. The actual on-the-ground solutions to access problem must ususally be sought at the local level -- State and district ofice for BLM and regional and National Forest offices for the Forest Service. Both the Forest Service and BLM local programs are very personnel intensive, particularly because they involve negotiations with landowners, and activities such as land appraisals.

The agencies generally have various alternatives available to them with respect to gaining access across private lands. These are explained in further detail in the forthcoming memorandum from the CRS American Law Division discussing Federal laws and regulations relating to access across private lands. These alternatives generally include: eminent domain (condemnation), exchange, purchase of easements or rights-of-way across private lands, reciprocal rights-of-way agreement between public agency and private landowner.

The traditional efforts of both agencies seems to lie with trying to acquire easements that allow passage across private lands — these easements are acquired through by purchase or exchange; condemnation is usually used as a last resort. Historically, there were many access agreements for administrative purposes only; the emphasis of both agencies now seems to be that easements should be acquired for both administrative and public use.

Bureau of Land Management

Agency and congressional attention on the problem of acquiring and maintaining access across private lands to public lands increased with the passage of FLPMA, as shown by the following quote from a Senate Energy and Natural Resources Committee report relating to the FY79 access budget proposals :

> The access provision of section 205(a) of FLPMA originated in this committee out of concern for the lack of access for the public, timber purchasers and other users to vast acreages of the BLM lands which are effectively landlocked by private lands. This provision was drafted in the expectation that it would spur the agency to more agressively acquire access easements.

As previously noted, BLM estimates that 25 million acres of land are inaccessible to the public, with some 8,800 easements needed to open them to public access. Despite agency budget documents that show money appropriated for acquisition of easements, and easements actually acquired (see Table 1), the agency has stated in every Budget Justification document since FY80 that 25 million acres of BLM land are inaccessible. This estimate actually dates back to the early 1970s; during appropriations hearings on the FY78 budget, a BLM official replied in answer to a question on whether BLM had an inventory of needed easements:

> We have an inventory that is 5 or 6 years old that was developed some time ago when one of the same kind of complaints you are talking about was ata peak. We will be more than glad to furnish it. It think it indicated there was something like 25 million acres or something around that that was blocked due to lack of public acess to the BLM lands. 5/

5/ U.S. Congress. House of Representatives. Hearings before the Committee on Appropriations, Subcommittee on the Department of the Interior and Related Agencies for 1978. U.S. Government Printing Office. Washington, D.C. 1977. p. 1176.

TABLE 1.

BLM Budget for Acquiring Easements
1979-1987[1/]

Fiscal Year	Access Budget (dollars in thousands) proposed	appropriated	number of easements proposed	actual
1987	$1,200	-	150	-
1986	1,203	$1,335	156	150 (estimate)
1985	1,228	1,395	122	126
1984	1,200	1,427[2/]	122	209
1983	1,525	1,640[2/]	159	159
1982[3/]	1,900	1,733	193	198
1981	1,670	1,802	118	4/
1980	2,185	2,235	135	
1979	1,500	1,552	212	
1978	1,100	1,500	212	

1/ Data are from BLM Budget Justifications and do not include monies or easements associated with Oregon and California grant lands.

2/ FY83 and FY84 dollars reported as actual expenditures.

3/ FY82 - FY79 budgets include both access and land acquisition program monies.

4/ Actual number of easements acquired is unavailable from budget documents for FY81 - FY78.

It thus appears that the 25-million-acre figure, as it is used today, is only a rough approximation, not based on actual count, and not adjusted as local situations change. In this context, the contribution of the BLM easement acquisition program to solution of the access problem is unclear. Although accomplishments have been reported, these easements have not been translated into the amount of acreage for which these easements provide access. Under these circumstances, it is unknown whether the BLM access program is:

- acquiring easements to only minor parcels of land that do not show up in the aggregate tally of accessible vs. inaccessible lands, or
- buying additional easements to land that is already accessible, or
- clearing up problems only with existing easements, but not acquiring new easements, or

In the budget and appropriations documents, increased attention to the issue began immediately after enactment of FLPMA, when BLM was asked to furnish a detailed list of proposed easements to justify their specific request for $1,100,000 for easement acquisition in their FY78 budget proposal. (Prior to this time, the costs associated with acquiring access or easements were generally considered within the budget line item for Public Lands Development Roads and Trails.)

In the FY79 proposed budget, BLM seems to have initiated a "Major Program Change" by moving the acquisition budget into the construction and maintenance line item. And in FY83, access became an independent subactivity within the construction budget line item.

Another requirement of FLPMA spurred a closer look at the access issue, as well as other resource needs: BLM 4-year authorization reports. Two of these reports were prepared pursuant to section 318(b) of FLPMA; BLM has no current plans to develop additional 4-year authorization reports.

In the first report, covering the years 1979-1982, it was stated that:

> At present, BLM has legal access to only 44% of the 470 million acres of public lands. The rest, 270 million acres is, or could be, blocked to public access. Legal access is necessary for the protection, development, administration, and use of the public land. 6/

Specific objectives for this period included acquisition of 245 easements annually, with 25 positions, and an annual budget of $1.7 million. No funds were included for land acquisition other than from the Land and Water Conservation Fund which was considered elsewhere in the report.

The second 4-year authorization report updated the inaccessible acreage estimate:

> The need for public access to public lands has become acute in some areas where ownership patterns have left large isolated blocks of public lands. An estimated 25 million acres of public lands are isolated by lack of public access across other ownerships. Such lands become of little or no use to the general public and are sometimes treated as private lands by adjacent owners without compensation to the American taxpayer. 7/

This report suggested three alternative funding and performance levels (level 1 being the highest, and 3 the lowest). Acquisition of easements was considered together with land acquisition, and included as goals:

6/ U.S. Department of the Interior. Bureau of Land Management. Four Year Authorization, Fiscal Years 1979-1982. pgs. 126-128.

7/ U.S. Department of the Interior. Bureau of Land Management. Four-Year Authorization. Report to Congress for Fiscal Years 1982-1985. October 1980. pgs. 152-155.

> To utilize new acquisition authorities with restraint to reserve and acquire easements needed to meet a wide arrary of public land user and resource management needs.
>
> To create a network of access road easements and easement agreements to open all available public lands to public use by the year 2000.

It was estimated that "over 80% of the proposed program is directed to the purchase of easements to provide legal access to public lands." The following excerpt from the 1982-85 Four-Year Authorization (pg. 154) shows the estimates and explanations for this activity. Generally, BLM requested increases in funds and personnel to keep the number of easement cases from developing into too much of a backlog; specific accomplishments for access easements were not enumerated separately from other acquisitions.

Investments

Funding in Thousands (000) of 1980 Dollars

	Requested Appropriation[1]	Existing Authorization[2]		Authorization Analysis			
FY	**1981**	**1981**	**1982**	**1982**	**1983**	**1984**	**1985**
Level 1	1,623	2,116	2,116	4,886	4,827	5,702	7,508
Level 2	1,623	2,116	2,116	2,977	3,931	4,367	5,318
Level 3	1,623	2,116	2,116	2,185	2,292	2,399	2,492

Full-Time Permanent Positions

	Existing Ceiling[3]	Existing Authorization[2]		Authorization Analysis			
FY	**1981**	**1981**	**1982**	**1982**	**1983**	**1984**	**1985**
Level 1	38	25[4]	25[4]	86	99	105	110
Level 2	38	25	25	62	68	85	96
Level 3	38	25	25	59	61	63	66

[1] Revised President's Budget
[2] BLM Four-Year Authorization for Fiscal Years 1979-1982
[3] Established by the Department of the Interior
[4] Non-statutory: reallocated by the Department of the Interior to meet backlogs and new demands

Performance

	Level 1	Level 2	Level 3
Service, Operations and Maintenance	Of the estimated 3,300 cases which will be referred for acquisition just prior to and during the FY 1982-85 period, 1,575 cases will be completed and significant work will be finished on over 1,000 more (28 percent "backlog").	Of the estimated 2,550 cases which will be referred prior to and during the FY 1982-85 period, 1,100 will be completed and significant work will be finished on over 700 more (42 percent "backlog").	Of the estimated 1,800 cases which will be referred prior to and during the FY 1982-85 period, 680 will be completed and significant work will be finished on 500 more (52 percent "backlog").

A comparison of the projections of money for acquisition of easements from the 4-year authorizations to what was actually spent or appropriated is shown in Table 2. It is easily observed that funding has not kept pace with the projected goals.

Access is also addressed within the current BLM planning process. In theory, the Resource Management Plans (RMPs) list the highest priority access acquisitions; more detailed attention is then paid to access problems in the specific activity plans. In light of the current funding situation, concentration seems to have been on access for commodity uses such as for range improvements and access for timber resources. Although these access roads are open for public use, access specifically for recreation purposes is often of lower priority. 8/

Recently, the access issue has been the focus of increased attention within BLM. The Colorado State Office updated its estimate of inaccesible land in a September memorandum (attached here as Appendix 2): "61 percent of the 8.2 million surface acres that BLM manages in Colorado does not possess legal access." The BLM Wyoming State Director initated a white paper for consideration by BLM managers on alternative ways to acquire public access. (attached to this memorandum as Appendix 3). This paper was discussed by BLM managers in November, and in response, a BLM Task Force was developed to review the situation and develop various alternatives in more detail. BLM is currently reviewing some of these various alternatives, but specific agency follow-up is uncertain. 9/

8/ Personal communication with BLM Lands and Realty Office, March 12, 1986.

9/ Ibid.

TABLE 2.

Comparison of Projected Needs for Access to Appropriated Dollars for Access (dollars in thousands)

Fiscal Year	Four-Year Authorization 1982-1985 [1] level			Appropriated dollars [2]
	1	2	3	
1985	6006	4254	1994	1,395
1984	4610	3494	1919	1,427
1983	3862	3145	1834	1,525
1982	3909	2382	1748	1,733
	1979 - 1982			
1982	1,700			1,733
1981	1,700			1,802
1980	1,700			2,235
1979	1,700			1,552

[1] These numbers reflect 80% of the land acquisition totals because "over 80% of the proposed program is directed to the purchase of easements to provide legal access to public lands."

[2] From Table 1.

Forest Service

The extent of the access problem across private lands to National Forest System lands is not as well defined as it is in the case of BLM. Part of the reason for this is that the Forest Service considers easement acquisition within the road and trail construction budgets; easement acquisition is not delineated as a line item within the Forest Service budget. In addition, the complexity of the Forest Service road program makes it difficult to total the amount of money spent on easement acquisition, or to keep a balance of inaccessible acres.

The Forest Service has not estimated or studied the amount of land that is inaccessible to the public; the Forest Service explanation of this problem is voiced in the previously mentioned Forest Service issue paper (Appendix 1).

In this issue paper, the Forest Service describes the access problem within the context of the transportation system: forest development roads and trails, highways, local public roads, and other roads that were public roads at one time but not currently "on any system operated by a governmental agency but do provide access to national forest lands." This last category of roads seems to be the source of most complaints.

Generally, the Forest Service believes the access problem to be a matter of degree. As stated in the issue paper in Appendix 1:

> Seldom is there an area in a National Forest that cannot be reached in some manner--by foot or horseback, or by more or less circuitous routes. The adequacy of access depends on the user's capabilities, needs, and attitudes. Trail or cross-country access is no value to the hunter who cannot hike a considerable distance or cannot afford to use stock or an off-road vehicle. Nevertheless, there is general agreement that some situations clearly constitute lack of access. The most clearcut cases are where a Forest

> Development Road within a Forest cannot be used by the public because the public road to which it connects outside the Forest has been vacated by local government, or permission to use a connecting road is revoked by a landowner. A similar situation occurs with roads across private land inside a Forest which have a historical use by the public, but on which a deeded right-of-way road is not held by the Forest Service.

The Forest Service has recently estimated their expenditures on acquisition of easements for the last three fiscal years (see Table 3). The money attributed to the cost of these easements are only part of the costs of the easement; these are the dollars spent out of Forest Service approppriated funds. Additional costs can include the costs of other landowners from cost-share agreements (for a further explanation of cost share agreements see Appendix 1).

Table 3

Forest Service Expenditures on Easement Acquisition
from Appropriated Funds
FY85-83

Fiscal Year	Easement Acquisition	Amount Paid to Landowners
1985	1,065 (no condemnations)	$816,012
1984	927 (3 condemnations)	$537,125
1983	1,113 (13 condemnations)	$635,991

In the West, the Forest Service assesses the access problem to be of greatest concern in Utah, Nevada, Colorado, Wyoming, southern California, eastern Montana, and some areas in New Mexico, Arizona, southern Idaho, eastern Oregon, and eastern Washington.

However, the only Forest Service region that has estimated the access problem in terms of numbers is the Forest Service Northern Region (Region 1) which includes Montana northern Idaho, North Dakota, and northwestern South Dakota. Table 4 shows this region's estimates, generally based on professional judgment, of the amount of national forest acreage that is inaccessible to the public.

The Forest Service issue paper also cites a few ways of improving access and mitigating the bad effects of inadequate access, including:

1. higher funding level for development of the transportation system for both timber and recreation access roads,
2. using trail access as a substitute for road access, where feasible,
3. improved cooperation and coordination among Federal, State, and local governments with private landowners and public users of Federal land including sportsmen and the product industries.

Because so much of the Forest Service road system is tied to timber sale areas and ventures such as cost-share agreements with timber companies, the vast majority of the current access funds are tied to timber access; the Forest Service asserts that they are unable to get financing for recreation easements, except in specific areas with specific appropriations. Recreation easements equal a relatively minor amount of the overall road budget. 10/

10/ Personal communication with Forest Service Lands Staff, March 11 1986.

TABLE 4.

Region 1 Estimates of National Forest System Lands that Lack Adequate Access 1/

National Forest	Acres	% of total National Forest Area
Beaverhead	300,000	14.1%
Bitteroot	200,000	12.6
Idaho Panhandle	500,000	15.6
Clearwater	500,000	29.7
Custer	500,000	42.2
Deer Lodge	250,000	20.9
Flathead	200,000	8.5
Gallatin	500,000	28.8 2/
Helena	100,000	10.2
Kootenai	500,000	27.4
Lewis & Clark	500,000	27.1
Nezperce	200,000	9.0
Lolo	500,000	23.6
	4,750,000	19.8% of region

1/ Personal communication with Forest Service Lands Staff, March 11, 1986.

2/ Increased from 17%, estimated in 1977 study on the Gallatin National Forest.

I hope this information is useful to you. If you have questions, or need additional information, please do not hesitate to call me at 287-7256..

Received 3/4/86

APPENDIX I
NATIONAL FOREST ACCESS PROBLEMS
(Figures are for September 1983)

I. Transportation Systems Providing Access to the National Forests

National Forest Access is provided by a combination of road and trail systems.

A. Forest Development Road and Trail System

This is the most important transportation system to the development of the National Forests and for access to them. It is provided for by the National Forest Road and Trail Act (16 U.S.C. 532-538), the Highways Act (23 U.S.C. 101, 205), and is funded by annual appropriations.

It is anticipated that the system will eventually consist of over 400,000 miles of road and 123,000 miles of trail. The planned system is mostly within National Forest boundaries. However, since there are about 39 million acres of nonfederal land within the boundaries (230 million acres gross, 191 million acres net) and in many areas large blocks of private land lie between the main highways and the forest boundaries, a substantial portion of the planned system is across private land and will require rights-of-way. The total National Forest road system now exceeds 322,000 miles. The vast majority of this originally was constructed for timber management purposes. It is estimated that more than $3 billion has been invested in constructing this system and that it would cost a least $10 billion to replace it today. Many rights-of-way for existing roads which are important links in this system still need to be obtained.

B. Federal State Highways

These are main arteries to and through the National Forests. They include the 100 percent federally financed Forest Highways. Of the 23,832 miles of Forest Highways, approximately 60 percent are coincident with the Federal-Aid System which is intended to connect population centers. These Forest Highways and other Federal and State highways are under the jurisdiction and administration of the States. To the extent they pass through the National Forests they are an important means of access.

C. Local Public Raods

The third category of roads serving the National Forests are the public roads under the jurisdiction of local governments. They most commonly are referred to as "county" roads. These roads are of special significance because they often are the connecting link between the Forest Development Road System and the Federal and State highways. To a large extent, people get to the Forests over these roads. In the Forest of the Eastern United States, they are a much larger proportion of the transportation system within the National Forests than they are in the West. Forty percent of the Forest Highway mileage coincides with these county roads and is, therefor, eligible for 100 percent Federal funding. In many areas, the principal access problem is related to these roads.

D. Other Roads

The last group of roads to be considered are those which are not on any system operated by a governmental agency but do provide access to National Forest land. They are across or partially across private lands. Usually, they were built or "grew" many years ago, often predating the automobile. Many were once public roads, operated and maintained by a local public road agency. Usually, they are low-standard roads often passable only part of the year to ordinary vehicles. Nevertheless, they have been an important means of access, especially for hunters and fisherman. Many are on the route of planned Forest Development Roads. In other locations these low-standard roads have served as substitutes for roads which have not yet been built by the Forest Service. They are often public roads which have been dropped from the maintenance system of local governments.

II. Access Problems

Before discussing the access problems associated with each category of roads, there are a number of points that have general application. They will provide perspective and, hopefully, a better understanding of the magnitude, location, and difficulty of access problems.

1. Access is a matter of degree. Seldom is there an area in a National Forest that cannot be reached in some manner--by foot or horseback, or by more or less circuitous vehicular routes. The adequacy of access depends on the user's capabilities, needs, and attitudes. Trail or cross-country access is no value to the hunter who cannot hike a considerable distance or cannot afford to use stock or an off-road vehicle. Nevertheless, there is general agreement that some situations clearly constitute lack of access. The most clearcut cases are where a Forest Development Road within a Forest cannot be used by the public because the public road to which it connects outside the Forest has been vacated by local government, or permission to use a connecting road is revoked by a landowner. A similar situation occurs with roads across private land inside a Forest which have a historical use by the public, but on which a deeded right-of-way road is not held by the Forest Service.

2. The access problem is worse in some Forests than in others. In the West, the worst situations are found on the Forest in Utah, Nevada, Colorado, Wyoming, southern California, Montana east of the Divide; and some Forest in New Mexico, Arizona, southern Idaho, eastern Oregon, and eastern Washington. In the East, access problems are found mostly in the mountain Forests of West Virginia, Virginia, and North Carolina and, to a lesser degree, the Ozark Mountain Forests of Arkansas and Missouri.

3. The access situation is growing worse in those areas where it is already bad. In many areas, we are losing county roads and what might be termed permissive access faster than replacement access in the form of Forest Development Roads is being provided. In most areas where access is fairly adequate, there is continuing improvement. This is because these Forests have important timber resources vital to local and national economy that contribute a large part of the cost of the roads.

4. Attitudes of private landowners toward roads across their lands have changed dramatically in recent years. In earlier days, most people who owned land within and adjacent to the National Forests wanted roads to be built. They wanted better access--to their own lands and to the Federal lands. Rights-of-way usually were granted without cost. Roads often were built across private land without an easement--simply on oral or written permission. Today, for a variety of reason, landowner attitudes toward roads across their lands are very different. Rights-of-way for new roads are difficult to obtain. Existing roads, for which no rights-of-way were obtained, are often closed by the landowner.

5. While there is growing concern over lack of access to the Federal lands, there also are complaints of too many roads in some areas. Both are valid concerns. There are areas which the public cannot get to, and there also are areas where the intensity of road development needed to utilize the timber resource exceeds that needed for administration, protection, and use of the other resources. A portion of the roads needed to harvest timber are not needed for any other purpose, and their use actually may be detrimental to other resources in the area. Leaving them open for public use many detract from the quality of the recreation experience, be detrimental to game habitat, and, of course, add to maintenance costs.

The apparent conflicting need for more access so that people can get to the National Forests and enjoy their recreation resources on the one hand, and too many roads in some areas, causes confusion in the public mind and makes support for solutions difficult to obtain.

There follows a discusion of the problems associated with each of the road systems as they affect public access to the National Forests.

A. Forest Development Roads and Trails

The principal way the Forest Service meets access needs in through additions to this system and by clearing up the right-of-way situation on these Forest Development roads and trails. About 1,200-1,500 road rights-of-way (easments) are acquired each year. Most of these rights-of-way are for new roads to be constructed. Some are for relocation or reconstruction of existing roads. A few rights-of-way have been acquired for roads which are claimed by the Forest Service but where we have an inadequate interest or no right-of-way. Some private roads are acquired after designating them Forest Developments Roads. Acquisitions in the last two categories have relieved some of the worst access situations.

Additions to the transportation system depend very largely on the level of annual financing provided. In recent years, almost all funds appropriated for Forest Development Roads have been needed to support the increased timber sales program. Forests with important timber resources usually have reasonably adequate public access and the new roads further improve an already satisfactory situation. Elsewhere, no new roads are being built or rights-of-way acquired on existing raods. Existing public access is being lost as landowners continue to close roads across their lands. An already bad situation is growing worse. The exact number being lost each year is highly variable and highly dependent upon the attitudes of the landowners. Many are only closed during hunting season and are left open the rest of the year. On the average, we expect the access is being lost on at least one road each year on each Forest.

In fiscal year 1984, the Forest Service expects to construct or reconstruct 11,000 miles of roads at an estimated cost of over $500 million. About 1,200 miles of road will be financed with appropriated funds through construction contracts. The remaining 9,800 miles will be constructed directly by the timber sale purchaser, or by the FS at the option of qualified purchasers, and paid for with proceeds from harvested timber sales.

B. Federal and State Highways

Forest Highways are the most important element of this system in providing access to the National Forests. Because of the significance of the Federal Aid Highway System to State and local econiomies, they seldom create any barrier to National Forest access.

C. Local Public Roads

In many areas, the principal access problem is related to the county road system. As a result of several interacting forces--social, economic, and political--there is a continuing net shrinkage of county roads within and leading to the Forests. The resulting gap is especially serious.

Rural counties with a sparse, widely-scattered population, a low tax base, and associated with National Forests which provide meager returns under the 25-percent receipts sharing, are hard put to provide an adequate local road system. There is a tendency to abandon a road beyond the last farm, ranch, or residence. When this happens, another access to the Forest is lost. In some cases, abandonment of a county road seqment leading to the National Forest is actively sought by the residents along the road so that public use of the adjacent National Forest land can be resticted.

The problems of meshing the local public road system with the Forest Development Road system are most serious where there is already poor access because an important timber resource to stimulate construction of roads and pay for them is not present.

D. Other Roads

Problems with this last class of roads are the source of most complaints from sportsmen. Although these roads historically have provided much of the access to National Forest Lands, particularly in the West, until recent years public use was accepted as normal by landowners and the using public. Denials of use for access were infrequent. This was true in part because there were not as many people using National Forest lands for recreation. Hunter and Fisherman were generally local people known to each other and the landowners.

The change in character of rural landowners from resident ranchers to absentee owners, people seeking solitude, and the subdivision of large, open ranches into small recreation oriented tracts, has resulted in increased opposition to the public crossing these lands. In some cases, changes in crops from timber and forage to marijuana production has made the public unwelcome. In other cases, new landowners bought the land because of its isolation and privacy, and find public use intolerable.

The situation also has changed because of population increases, greater mobility, and more leisure time. Private lands close to National Forest lands have been closed to the public and posted. Many owners have closed the road through their property where there was no deeded right-of-way owned by a public road agency. There are many cases where the primary objective in closing a road was to monopolize use of the adjacent National Forest with a resultant increase in the value of the hunting rights on the private land. Some owners have charged the public to use a road or trail to reach the National Forest.

Sportsmen sometimes abuse crossing privileges. Only a few instances of hunting on private land without permission, fence cutting, littering, leaving gates open, and off-road vehicle travel provide the excuse for wholesale road closures where the private landowner has control.

E. Special Situations

Two special problem access situations occur which deserve separate mention:

1. A number of National Forests are bordered for significant distances by Indian Reservations. Often, the only access to the National Forest is through the reservation. It has become increasingly difficult and in some cases impossible to obtain rights-of-way for roads or trails through some Reservations. Some Forest Development roads can no longer be used because the Reservation roads to which they connect have been closed to the public. Neither public road agencies, nor the Federal Government have the authority to acquire rights-of-way on Reservations except through negotiations.

2. Some municipal watersheds on the National Forests are closed to public recreation use through special legislation or under agreements with the municipality involved. The Forest Service has long felt that regulated use of these valuable recreation lands will not impair the quality of the water for municipal purposes. Efforts to open up these watersheds to some public use have been unsuccessful.

III. Solutions

The Forest Service, as the agency charged with administering the National Forest, has primary responsibility for solving the Forest access problem. There is no single simple solution. Instead, there are numerous partial solutions which must be applied over a period of time to have results.

Following are actions which can have an affect in improving access and in mitigating the bad effects of inadequate access. Something is being done on all the items listed. A step-up in the effort is warranted. To make progress, the cooperation of landowners, State and local government, sportman, and other National Forest users is needed. This basis for cooperation is an understanding of the access problem in all its complexities.

1. A higher funding level for development of the Forest transportation system would allow better progress in areas where the stimulus of timber access needs is lacking. Support for appropriations has come almost entirely from the timber industry. Forest Service program and budget development processes have emphasized the need for timber access roads to satisfy the nation's need for timber. The need for public access that is not satisfied by timber roads is difficult to quantify and assign values. The benefits are often intangible. Satisfaction of the need does not produce a saleable product, the return of money to the Federal treasury, and monetary returns to local government through 25-percent receipts sharing.

The Forest and Rangelands Renewable Resources Planning Act (P.L. 93-378), referred to as RPA, provides a procedure for developing a long-range program for meeting access needs and for funding through the appropriation process. The access problem will be included in the assessment and program required by RPA to be prepared and sent to Congress every 5 years. The program to be submitted at the same time will identify specific opportunities for investment, anticipated results, benefits, and costs. The RPA program and assessment should give the Exective and the Congress an opportunity to look at the access problem in the right context and with the information at hand to decide on a program and funding for its solution.

2. A program that contributes materially toward improved access is the construction of roads in cooperation with major timber companies and other owners of large acreage intermingled or checkerboarded with National Forest land. Joint ownership is obtained by an exchange of easements. The Government obtains rights to use the roads for all National Forest purposes and for the public to use the roads. Besides making the National Forest lands accessible, the cooperating landowner's lands generally are opened to extensive recreation use such as hunting, fishing, hiking, and riding. In sharing costs of road construction, the government assumes the cost-share attributable to recreation use regardless of ownership of the lands generating the use. More than 12,000 mile of roads have been built under this program, providing access to several million acres in California, Oregon, Washington. Idaho, Montana, and Arkansas.

3. The problem of too much access in areas of intensive timber resource development is being met by a positive road management program. Roads are classified in three categories and managed under separate prescriptions.

Long Term-Constant Entry Roads Generally are open continuously to Forest visitors and for commercial traffic.

Long Term-Intermittent Entry Roads are generally needed and used only for utilization of resources (usually timber) and are closed to use by Forest visitors. However, they are available for use as trails.

Short Term-Project Entry Roads are constructed for a short-term, one-time use in connection with a specific project, such as a timber sale. When they have served their purpose, they are obliterated.

An active road management program including closure of roads not needed for public access should allay fears that there are too many roads in the National Forests and develop support for getting public access to those areas where it is badly needed.

4. Trail access as a substitute for, or in addition to, road access is becoming increasingly important. In some cases, a trail can serve as interim access until a road can be built. Often a trail may be the only access needed to relatively small areas not reached by a road. Right-of-way for a trial generally is obtained more easily from private landowners.

Likewise, trails are becoming a larger and more important component of the transportation system in the interior of National Forests. Intermittent Entry roads generally are open for use as trails although closed to normal vehicle use.

5. The area of juncture between county roads and Forest Development Roads is where much of the access problem lies. There is often a "no-man's-land" between the National Forest System and the State or county system. There is a need for agreement among government levels on the demarcation of responsibilities. The local public road system is the weakest link in the transportation system serving the National Forest. Recent redesignation of the Forest Highways, whereby emphasis is being placed on improving the local road system upon which National Forest access is highly dependent, has significantly strengthened the counties' financial capability for providing an adequate road system. The need for county and State participation is very high where the roads also serve private lands within the Forest since the Forest Service is not a public road agency.

Forest Supervisors have long worked with county governments to resolve problems on a road-by-road basis. Many counties have cooperative agreements with the Forest Service which call for joint effort in improving and maintaining county roads which serve the National Forests. It appears desirable to engage higher levels of government in the quest for solutions to the problems of meshing county roads with the Forest Development Road system.

6. Roads which provide access to National Forest lands which are not presently on any system operated by a governmental agency generally are logical additions to the Forest Development Roads system. Those which are added will be eligible for expenditure of appropriated funds for their improvement and especially for purchase of rights-of-way.

7. There needs to be more direct contact between sportsmen organizations and Forest Service officials at the local level. Discussion of specific access situations can lead to actions which will solve problems. National Forest users need to take a greater interest in the local public road system and its relation to access to the public lands. Too often the parties requesting abandonment of public roads are the only parties heard from. The counties should be encouraged to spend at least a part of the money they receive from National Forest Receipts to improve the access to the National Forest.

APPENDIX 2

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
COLORADO STATE OFFICE
2020 ARAPAHOE STREET
DENVER, COLORADO 80205

IN REPLY REFER TO
CO-941
2100

September 19, 1985

Instruction Memorandum No. CO-85-386
Expires: 10/31/85

To: District Managers

From: State Director, Colorado

Subject: BLM, Colorado Access Acquisition Policy

The purpose of this memorandum is to summarize my policy on several aspects of our access acquisition program. This is prompted by statistical data recently provided by each District Office which revealed that approximately 61 percent of the 8.2 million surface acres that BLM manages in Colorado does not possess legal access. In addition, much of the access that has been obtained in the past does not afford public access.

The main issues I want to emphasize are as follows:

1. Public Access: Due to our land pattern, there are large blocks of BLM land in Colorado that are either not legally accessible or not easily accessible to the people of the United States generally. Because of the pressures we are receiving for public use and enjoyment of the lands we manage, I want all managers to give high priority to the acquisition of public access (exclusive easements). Acquisition of administrative access (nonexclusive easements) should become the exception, not the rule. I have instructed the State Office Branch of Engineering and Support Services (CO-941) to carefully review all nonexclusive easements prior to requesting title opinions or ordering checks for payment.

2. Administrative versus Public Access: When it is determined that exclusive easements are needed to provide public access, I do not want managers or access specialists to deviate from that position to appease landowners. When we accept a counteroffer by a landowner to sell us an administrative easement rather than a public easement, we have, in essence, accommodated one person and denied access to many. I realize this may make negotiations more difficult and, in some cases, delay implementation of Bureau plans; however, in the long run, it will have a beneficial effect on our programs and allow greater use and enjoyment of the BLM lands by the public.

3. Acquiring Access Through Condemnation Procedures: This is an acceptable means of acquiring access in certain situations, particularly when an impasse is reached in negotiations and the landowner's objections cannot be resolved through administrative remedies. As stated in paragraph number 2 above, managers and access specialists are not to abstain from initiating condemnation procedures due to objections by landowners to the access rights we want to obtain or because condemnation procedures are time-consuming and costly.

As long as we present a justifiable and defensible case, we can obtain access through condemnation procedures, and should not hesitate to use this process when needed.

As State Director, you have my assurance that I will not be reluctant to invoke condemnation procedures for well-documented and justifiable cases which are recommended and approved by the District Managers.

4. Negotiating for Access: Due to the emphasis that I am placing on acquiring public access, it will be increasingly necessary for Area Managers and District Managers to take an active role in negotiating the more difficult access acquisitions. I want you to use all the tools you have available to the fullest extent possible. Listed below are some examples in which managers can play a key role in acquiring public access.

a. Land Exchanges: Exchanges (either regular or exchange pooling) can be used to either acquire the lands needed for access or as a motivator in negotiations to get a landowner to sign an easement. Care should be exercised to assure that we acquire lands that benefit Bureau programs and avoid acquiring lands that will have to be disposed of at a later date.

b. Reciprocal Right-of-Way Grants: The procedures for acquiring access by this method are contained in W.O. Instruction Memorandum No. 85-560, dated July 19, 1985, and BLM Manual 2801.23. Although the W.O. Instruction Memorandum indicates that reciprocal procedures are not applicable to situations where perpetual exclusive easements (public access) are needed, I want you to make it clear to all right-of-way applicants that we are going to negotiate vigorously for public access across their lands provided (1) they own land in the immediate vicinity and (2) our transportation plans reflect a need for public access across their lands.

This is where District Managers and Area Managers can play a key role in the negotiations by deferring issuance of right-of-way grants across public lands until public access needs across private lands are thoroughly evaluated and negotiated. My objective is to obtain a greater amount of public access to public lands by using our discretionary authorities as a bargaining instrument with public land use applicants. If we are successful in doing this, prospective applicants should start thinking in terms of what they can offer in return for use of public lands prior to submitting an application.

c. Informing the Public - District and Area Managers should take advantage of every opportunity to inform the public regarding our access policy. The principal message that you should convey is that the BLM in Colorado is going to make a concerted effort to make more BLM lands available for public use and enjoyment. We are going to emphasize public access, as opposed to administrative access, and will negotiate vigorously with land use applicants to obtain needed access across private lands. When necessary, we will initiate condemnation procedures to obtain public access.

Kannon Richards

APPENDIX 3

IN REPLY REFER TO:
2130(910/
930/940)

United States Department of the Interior

Bureau of Land Management
Wyoming State Office
P.O. Box 1828
Cheyenne, Wyoming 82003

NOV 0 1 1985

Memorandum

To: Director (200), Rm. 5654
Director, DSC (D-200)
All State Directors

From: State Director, Wyoming

Subject: Access to Public Lands

In September 1985, we developed a draft issue paper titled "Access to Public Lands" and transmitted a copy of the draft paper to all of you for comments and suggestions for improving the paper. We have reviewed your responses and were very encouraged by the support received.

Enclosed is a copy of the final issue paper which will be discussed at the Bureau Management Meeting. The following additions were made:

1. Under Action Steps (National Level), Step 7 add the following: "Simplify acquisition procedures".

2. Under Action Steps (State Level) the following were added:

   a. Under Step 6, "counties" were included as one of the agencies.

   b. Step 11 was added as follows: "Encourage the declaration of public roads by the counties and work with the counties so that county roads access public lands to the greatest possible extent."

   c. Step 12 was added as follows: "Develop recreation access maps."

   d. Step 13 was added as follows: "Obtain nonmotorized easements (walk-in and horseback) where limited access is required."

6. Under Item 7, Simplify Surface Exchanges (fee) or Trade of Use Agreements, the following were added under the "Pro" column:

   a. "Creates a public land pattern that is physically and legally accessible and usable."

   b. "Benefits access by eliminating the problem with isolated tracts surrounded by private land."

Thank you for your comments and suggestions. They were all very helpful in finalizing the issue paper.

Hillary A. Oden

Enclosure

ACCESS TO PUBLIC LANDS

ISSUE:

Increased public demand for use of public lands and the public's inability to use the lands due to intervening private lands.

RECOMMENDATIONS:

Two approaches:

A. Aggressively implement existing Bureau policy and procedures (Bureau Manual 2100, Acquisition)

Action Steps (National Level)

Additional funding to support 2300 Program in order to fully utilize trained ATROW personnel.

2. Funding for road construction to relocate or realign portions of existing roads onto public lands where feasible.

3. Additional funding for maintenance of existing roads.

4. Reinstate ATROW training courses similar to the Phoenix training.

5. Acquire Land and Water Conservation Fund (L&WCF), Subactivity 3110, financing.

6. Complete and issue handbooks for 2100 Manual section by Headquarters Office.

7. Simplify acquisition procedures.

Action Steps (State Level)

1. Develop State acquisition policy statement.

2. Require all acquisitions to be negotiated for public use. Require justification if less than perpetual exclusive easements are acquired.

3. Acquire easements by exchange, reciprocal right-of-way grant, and condemnation if necessary.

4. Fund full--time State Office Acquisition Specialist and District Access Specialists if a more active program develops.

5. Additional support to 2300 Program by benefiting activities.

6. Involve other Federal, state, and county agencies and private organizations in the development of acquisition plans, i.e., Forest Service, Game and Fish, State Land Commissioner, Wyoming Wildlife, counties, etc.

7. Identify access needs more specifically in RMP's.

8. Statewide effort to educate the public such as Operation Respect (Rawlins District), land ownership maps (Casper District), and S-60 Program (Rock Springs District).

9. Actively prosecute violators of 43 CFR 4140.1(b)(7), "Interfering with lawful uses or users." Use law enforcement personnel to take action under 4170.2 and the citation authority. Administrative action can be taken following conviction to suspend or cancel a grazing permit or lease where warranted. Develop a more responsive reporting system such as a hotline.

10. Implement existing Memorandum of Understanding, WY-63, i.e., Forest Service, BLM, State Land Office, and Wyoming Game and Fish Department agreeing to prioritize access efforts.

11. Encourage the declaration of public roads by the counties and work with the counties so that county roads access public lands to the greatest possible extent.

12. Develop recreation access maps.

13. Obtain nonmotorized (walk-in and horseback) easements where limited access is required.

B. Recommend options to enhance access to public land in lieu of acquisition of rights

Notwithstanding the following options in lieu of acquisitions, management should continue to emphasize the Bureau's responsibility to implement the acquisition procedures to acquire rights needed to manage, protect, develop, maintain, and use resources on public land (Bureau Manual 2100.06, Policy).

Options recommended to enhance the casual use (i.e., hunting and other recreational uses) of the public lands as follows:

1. Stewardship Program

2. CMA's

3. Legislation for reduced liability of private owners

4. Terms and conditions on leases and permits (grazing)

5. Expanded authority for reciprocal authority

6. Public education--"Alfred Access Program"

7. Simplify surface exchanges or trade of use agreements

8. National program promoting access opportunities

C. Discussion of options in lieu of acquisition of rights

1. Stewardship Program

The BLM presently has the experimental stewardship program and the State has the Wyoming stewardship program. These programs could be used to get private landowners to allow public access to public land across private lands. Incentives could be offered such as increased flexibility in the livestock operations or reduced grazing fees. These types of programs could be used to open large blocks of land such as the Rock Springs Grazing Association (2,000,000 acres).

Pro	Con
Process is simple	Won't work on problem cases (Safari Club)
May work with cooperative for large areas, i.e., Rock Springs Grazing Association (checkerboard)	Not permanent—may change with ownership or attitude of owners
Good PR for BLM and owner	Reduced Federal revenue
Low up-front cost	No authority to spend public money on facilities
Benefits user	Liability increased for private owner

2. Cooperative Management Agreements

The CMA program is currently in use within the Bureau for a variety of purposes. These agreements could be used to gain access to public lands from non-permittee or leasee landowners. We would be looking at providing some service to the private landowner in exchange for access across his private lands. This could be provided by the BLM or we could involve a third party to volunteer services such as Audubon Society, Wildlife Federation, ORV clubs, sportsmen associations, etc.

Pro	Con
Third party could cooperate	No perpetual rights
Good PR with (can involve a lot of groups like Wildlife Federation)	No authority to spend public money on facilities
Formalized volunteer program	Won't work with uncooperative landowners
Low up-front cost	Questionable benefit to landowner
Simple process	Increased liability to private owner
Delegated to Districts	
Public benefits	

3. Legislation Limiting Liability On Private Land Resulting From Increased Public Use

Some private landowners are reluctant to allow the "general public" the use of and/or passage over their private lands due to the liability assumed. They feel that some of the general public may sue the landowner if they have an accident while on the private lands. This accident might be a fall into a gully, a vehicle accident due to rutted road conditions, etc.; i.e., any type of accident where a lawyer might be able to show the landowner should have foreseen there was a hazard and should have eliminated that hazard. This litigation is costly to defend against and, since simple settlements may run into millions of dollars, could mean financial ruin. Therefore, a private landowner says "I won't let anyone on my land to have an accident."

Legislation is needed to reduce the liability risk private owners take in allowing persons to enter their lands.

Pro	Con
Could cover casual uses	Normally subject to state law

4. Terms and Conditions on Leases and Permits (Stipulate Access, 1979 Solicitor's Opinion)

A 1979 Solicitor's opinion states that Section 402 of FLPMA provides that the Secretary may issue permits and leases for domestic livestock grazing on public lands, subject to such terms and conditions the Secretary deems appropriate. Those conditions could require a permittee or leasee to grant the BLM access across his private lands. This opinion is in regard to administrative access, but could be expanded to include public access (copy of 1979 Solicitor's opinion attached). This approach could be used on specific cases to solve specific problems and not done on a large scale basis because of the political problem that could occur.

Pro	Con
Currently have authority	May not be politically acceptable
One shot cure-all	Viewed as government takeover
Would open a lot of land	Rekindle Sagebrush Rebellion
Reduces number of easements we acquire	Users wouldn't accept permit or lease
	Would take a lot of support work for signs, etc.
	Liability for landowner

5. Expand Reciprocal Right-of-Way Authority To Include All Types of Rights-of-Way. Could Also Include Third Party Agreements.

Expand reciprocal right-of-way authority to include all types of rights-of-way. Also include third party agreements.

We currently have policy guidance on the use of reciprocal right-of-way grants, Instruction Memo No. 85-560. This policy somewhat restricts the Bureau as to what kind of access we should stipulate on the grant. We feel this policy could be expanded to include public access and also develop policy and procedures for "third party" agreements on the grant.

In areas where the ownership pattern is fragmented, the third party could be required to negotiate some type of public access, in strategic places, with the landowner adjacent to the public lands. This could be stipulated in the right-of-way grant. An excellent example would be a major right-of-way that crosses the State such as the now proposed CO_2 pipeline.

Pro	Con
Leverage	Requires legislative change
Relatively fair	Limited application
Eases negotiation	Won't always fit problem areas
Cheap	
Require rights-of-way for all commercial uses including grazing	Problem compounded by subleasing

6. "Alfred Access Program" (Johnny Horizon's cousin)--a (Nationwide) Public Education Program

This is envisioned as a public affairs program to educate the public on their "rights" of access to public lands, where to get information, where assistance is located, etc. This program would be high visibility.

Pro	Con
Good PR	Costly
Reduce conflicts through better understanding	Cosmetic approach
Increase awareness	Visibility may be excessive
Spinoff's with national service groups	
United effort—currently a lot of	

7. Simplify Surface Exchanges (fee) or Trade of Use Agreements

These are two distinctly different possibilities that have many of the same pros and cons.

Exchanges are a permanent solution to access questions, however, the process is entangled in red tape. Major changes in process are needed to reduce the time required for an exchange.

Trade-of-use agreements would allow a private landowner to control access in some areas while allowing the Bureau to control access in other areas. This is not a permanent solution but could be used rather quickly and easily. Some authority will be needed to allow public lands to be closed to public use when covered by a trade-of-use agreement. A trade-of-use could be used as a temporary action pending a formal exchange.

Pro	Con
Low cost	Needs major procedural changes
Permanent or semipermanent solution	
Reduce timeframes to complete	Surface exchanges can complicate mineral development
Reduces number of easements we acquire	Couldn't invest money with trade of use areas
Creates a public land pattern that is physically and legally accessible and usable	Substantial Bureau and State Office guidance required
	Risk of abuse of authority
Benefits access by eliminating the problem with isolated tracts surrounded by private land	Would require Bureau funding to carry out
	Complicated covenants

8. Develop a national level program to promote access opportunities

Initiate a program at the national level that would provide policy, guidance, emphasis, and reporting responsibility on access opportunities. By promoting this at the national level, it would be given a longer life with an annual commitment toward accomplishment.

Pro	Con
Resolves needs in a short time	Requires more FTE and money

Good PR nationally	Alienate affected landowners
Enhance implementation of RMP's	
Continuity	Difficult to sell to current administration
Most policies and procedures already exist	Requires management commitment

SUMMARY STATEMENT:

The Bureau as a resource management agency is perceived as providing professional management of the public resources. Public lands, defined as vacant and open areas independent of present community resources, are considered by some public as one of the multiple resources. Just the ability to go on public land for casual recreation creates a resource. Lack of access to these lands is a issue that implies the Bureau is irresponsible by not providing means to access these lands for casual use (i.e., Elk Mountain, hunting).

Procedures to acquire private lands and interest in lands is well established and the Bureau is acquiring rights in critical areas in order to manage the public land and its resources. This workload must continue and probably be accelerated. However, these procedures are time consuming and progress is slow and piecemeal. In situations where allowing casual recreation use is the public demand or perhaps a recognized management objective, then perhaps exercising other options in lieu of acquisitions is necessary to meet this demand. This paper has presented options potentially available to provide access.

ATTACHMENTS:

MOU, WY-63

Solicitor's Opinion, January 7, 1979

Reciprocal Right-of-Way (R/W) Grant Procedures, Instruction Memorandum No. 85-560, dated July 19, 1985

Information Paper--Wyoming Access Program

BSC

THE STATE OF WYOMING

Ed Herschler, *Governor*
Leno Menghini, *Superintendent and Chief Engineer*

Wyoming State Highway Department

P. O. BOX 1708 CHEYENNE, WYOMING 82002-9019

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April 14, 1986

The Honorable Malcolm Wallop
United States Senate
Chairman
Public Lands, Reserved Water and Resource
Conservation Subcommittee of the
U. S. Senate Committee on Energy
and Natural Resources
Senate Office Building
Washington, DC 20510

Dear Senator Wallop:

I regret that legislative commitments prevented my participation in the oversight hearing in Rock Springs March 15 concerning access to public lands. Access is essential to construct, operate and maintain the public investment in state highways that cross public lands. Consequently, any action that affects access to the public lands is of concern to the Wyoming State Highway Department. I welcome this opportunity to offer comments to your subcommittee.

BACKGROUND

The public land agencies we deal with mostly are the Bureau of Land Management and the Forest Service. Occasionally, we deal with the Bureau of Reclamation, the U. S. Fish and Wildlife Service and the National Park Service. Highway rights of way are granted by the Federal Highway Administration in accordance with 23 USC 317. Access to gravel pits is provided through Free Use Permits issued by the land management agency. Access for temporary use areas such as borrow pits, storage areas or asphalt plants requires a lengthy application and relinquishment process.

All of our state highways that cross public lands are on the Federal Aid Highway System; consequently, improvement projects are eligible for funding through the Federal Aid Highway Program which is administered by the Federal Highway Administration. In order to clarify administrative responsibilities and avoid duplication of effort in complying with federal law, the Wyoming State Highway Department and Federal Highway Administration have entered into Memorandums of Understanding with the various land management agencies. These agreements cover the spectrum of administrative matters, address working arrangements and assign responsibilities among the parties.

As can be seen, access to public lands involves the Department in two ways: we must provide and control highway access to adjacent public lands, and we must obtain access to public lands to build, maintain and operate state highways.

HIGHWAY DEPARTMENT LAND ACCESS POLICIES AND PRACTICES

The Wyoming State Highway Department controls highway access to provide adequate safety for the highway user and to maintain the integrity and operational freedom of the highway. Acceses are provided to intersecting roads, to roadside facilities and for use and management of abutting lands. The Department regulates accesses by controlling the location, design and signing of access points.

While placed as a safety measure to keep livestock off the highway, fencing also controls access to adjacent lands. This access control feature, particularly as it affects wildlife, makes fencing a highly controversial issue. The need for fencing and the type of fencing are dictated by adjacent land uses and management prescriptions as they affect the safety and operation of the highway. For example, woven wire is necessary to control sheep while barbed wire is required for cattle and both types adversely affect wildlife movement. We have also had some special cases where we have fenced to control wildlife.

We have tried various fence designs intended to control domestic livestock and also allow wildlife passage; and, at best, they have been marginally successful. Laydown fences to accommodate seasonal use have generally failed, principally because they require extensive maintenance and must be taken down and put up to meet rigid schedules.

We have had some special fencing projects to keep deer off the highway, and force them to cross at underpasses. These have successfully kept deer off the highway; but the crossing structures, extra tall deerproof fences, special design consideration and maintenance burdens make them costly and limit their use.

HIGHWAY DEPARTMENT LAND ACCESS NEEDS AND CONCERNS

The Wyoming State Highway Department uses public lands for highway rights of way, sources of construction materials and other temporary uses associated with highway operations. Access to public lands, regardless of the administrative procedure under which it is granted, is subject to conditions determined by the land management agency to be necessary for the protection and management of the public lands.

These conditions are determined from the management prescriptions developed for the various parcels of land. While these prescriptions seem to us to be broad and flexible, we find them in many cases to be applied very narrowly and rigidly with little concern for cost or whether the objective can be achieved. Some examples:

1) In a slide repair project, considerable slide debris was removed to bedrock and the road shifted to the more stable foundation. This increased the amount of exposed rock in the cut backslope. The land manager stipulated that the exposed rock be covered with black chain link fence to soften the visual impact. This would have cost in excess of $100,000 and would not have accomplished the intended purpose. The stipulation was eventually relaxed, but only after strong protest.

2) On a widening and modernization project, snow conditions could be greatly improved by flatening slopes. This would extend 200 feet into adjacent lands. The land manager estimates that possibly four pairs of ferruginous hawks, a Category II species, may inhabit the eleven mile long project area. The stipulations for these land encroachments is that there be no construction activities from March 1 to July 15. This would add a construction season to the project increasing the cost 15 - 30% depending on how the contractor planned his work. The irony is that the project can be built without the use of public lands, the presence of the hawk within the influence of the road is presumed, and there is no knowledge of the effect construction activities might have on the hawk.

3) A renewable river source of gravel was used for many years in the maintenance of approximately 15 miles of highway. It is now being denied because the river is used for float trips and eagles inhabit the area. The material can be removed without affecting the eagles and without affecting river usage. Alternate sources of materials are at least 20 miles distant. This section of road is in desperate need of resurfacing. We have postponed this work because we cannot, in good conscience, spend $500,000 for unnecessary haul.

4) Recently adopted administrative processes for granting access for short-term uses have, in our opinion, needlessly encumbered a rather simple, straight forward process with red tape. Over the course of the last 15 years, BLM policies have drastically changed for what we would call auxiliary or incidental uses. BLM, at one time, had a process for what was called Special Use Permits. This was later changed to Temporary Use Permits. Both procedures were relatively simple, could be processed quickly and had broad use. They were used for temporary land uses such as construction campsites, processing sites for construction material, storage of material, etc. Since 1982, an easy method has not existed. Every use must now be processed as a formal application, and a letter of consent for use processed and a deed easement issued. We would like to see the local offices vested with the authority to issue some type of local permit

be it called a Temporary Use Permit or something else. The local official should be able to analyze requests and issue short duration permits for nonpermanent uses say up to five years. The requirements for ecological investigations, in depth environmental analysis and archaeological and historical clearances have unnecessarily burdened the application process and causes delays in right of way grants and short-term permits.

These examples demonstrate what overzealous and overly protective land management actions can do to project costs.

We are noticing an increasingly agressive and protective posture on the part of land managers, particularly the Forest Service. Not too subtle attempts are being made to control our engineering designs as well as construction. Curvature, grades and particularly pavement width are nearly always questioned and often vigorous attempts are made to force reduced standards. In cases where we have compromised, the project met immediate short-term needs, but will have to be modernized within five to ten years. Not only does designing for short-term needs shorten the highway modernization cycle, but it is not cost effective. Maintenance costs more because the more serious design shortcomings must be remedied as maintenance actions. Substandard designs place the Department in a precarious position if sued for failing to provide a safe highway. Unfortunately, it seems to us that reminders that we are the party charged with administering state highways falls on deaf ears.

While land managers should monitor our construction activities to see that they do not adversely affect their resources, we feel that efforts on their part to approve or reject changes in, or compliance with, construction plans and specifications overstep their responsibilities.

SUMMARY

As I see it, highways are considered in Federal land resource management planning as intrusions that must be tolerated. I view them as a vast national resource that is essential to the well being of the nation, and one in which there has been a huge national investment to develop and maintain. This doctrine must be recognized in resource management planning and, once it is, strategies will be reflected in management prescriptions that assure our public highways are properly maintained and their obsolescence avoided. These strategies must recognize state highway departments as the experts in highway transportation, and make needed resources available without costly encumbrances that do not accomplish their resource management purpose.

Very truly yours,

Leno Menghini

Leno Menghini, P. E.
Superintendent & Chief Engineer

LM/WPK/mg

ROCK SPRINGS MAR 19 1986

1635 Arizona St.
Green River, WY 82935
March 17, 1986

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C.C. T.B

Senator Malcom Wallop
2515 Foothills Blvd.
Rock Springs, WY 82901

Dear Senator Wallop:

In regard to your public hearing of the Senate Subcommittee on Public Lands, Reserved Water and Resource Conservation, I offer the following comments to these proceedings.

It appears that little or nothing should be done on the part of the federal legislatures concerning access to public lands. Hopefully the judicial system can resolve site specific problems where access problems do exist. I respect the landowner's right to not allowing access to their private lands. But I do hope that the courts will force landowners into some sort of compromise where a group of landowners are preventing any access to large parcels of public land.

I do not feel that a private landowner should be held liable for injuries to persons given permission to use their land for recreational purposes, even if they desire to charge a fee for a secondary income. The legal aspects of access/liability might be the only area of concern by your committee.

I do not like any suggestions which consider turning over public lands to the management by private landowners who lease those lands. I have no desire to give up my rights to access to public lands ! I prefer the use permit which allows a specific land use rather than a permit which allows complete control of the acreage involved. Since an entire national forest is generally broken down into grazing allotments, I might have to purchase a permit, tresspass fee, and/or permission to visit any portion of a national forest based on a system of private management of public lands. NO WAY!!

It is also important to allow each state to determine how they will handle wildlife depredation on private lands. Certainly compensation of some sort is warranted to private land owners if they desire compensation. And I am willing to provide some of that compensation.

I believe that access problems are limited and site specific in nature which requires no legislation. Wildlife depredation is a problem at the state level. Liability is a problem on private lands which should be explored. And that we should never turn management of large parcels of public land to private interests.

Sincerely,

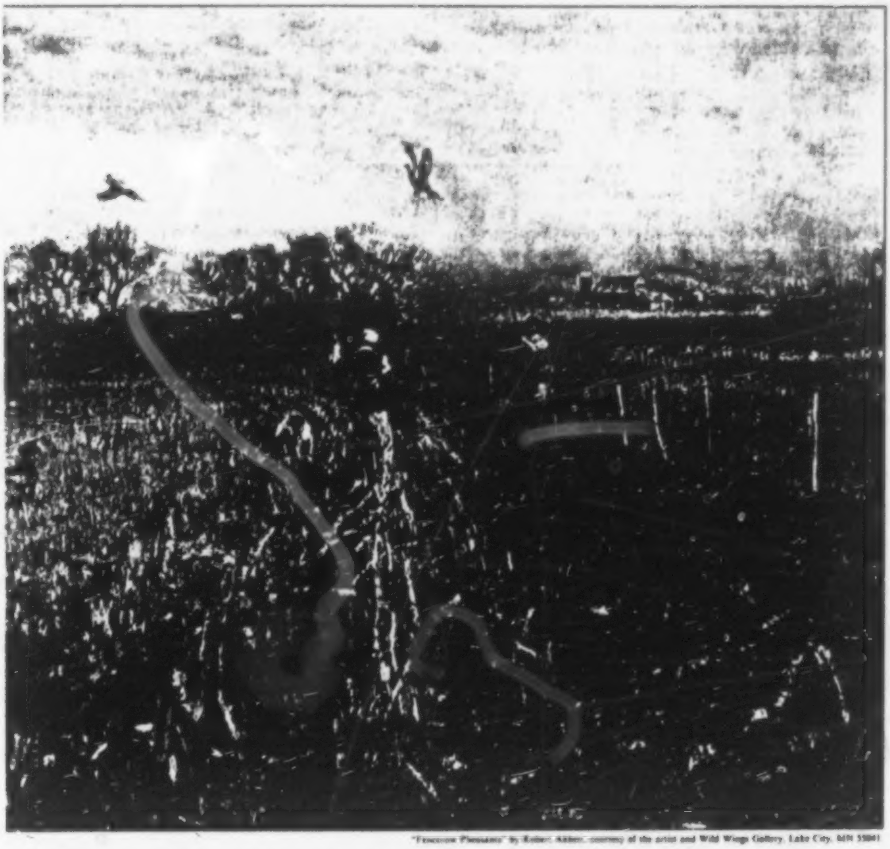
Tom B. Jacobsen

SHARING THE LANDSCAPE

One of the wildlife manager's greatest challenges is arranging a peaceful coexistence between landowners and wildlife

article by Walt Gasson
artwork by Robert Abbett

On a beautiful, sunny morning in the fall of 1492, His Majesty Ferdinand of Spain became the proud owner of the entire state of Wyoming. Though the king didn't know it at the time, his emissary, an Italian sailor named Columbus, had laid claim to all of Wyoming (and the rest of America along with it) from



"Fencerow Pheasants" by Robert Abbett, courtesy of the artist and Wild Wings Gallery, Lake City, MN 55041

sunny island in the eastern Carribean. It was an audacious claim, as many claims of land ownership are, but both the King and Senor Columbus were long on audacity. Needless to say, no one in Wyoming paid much attention to the first landowner in the state.

The ownership of the land in question changed several times in the next 300 years, but Wyoming remained essentially a wilderness area, inhabited by a number of Indian tribes until the late 1700s. These must have been magnificent times for wildlife. Buffalo and antelope numbered in the millions. Elk and bighorn sheep were found in virtually every rough or timbered area. Grizzly bears and wolves stalked their prey as they had for millenia. The concept of ownership of this land had no more significance than the ownership of the wind or the rain.

In the first half of the nineteenth century, white men came to Wyoming in numbers for the first time. They brought with them two things: their chief occupation, agriculture, and the Judeo-Christian idea that land could (and indeed, should) be owned. These two things were to change Wyoming forever. European man, along with his cows and plows, would have more impact on Wyoming in a hundred years than Native American culture had in ten thousand.

The early Wyoming ranches were run open-range style. There was no need for fences. You simply turned the cows out on the range, the bulls took care of the breeding, and you sold what you needed to for capital. The more cattle (or sheep) you could turn out, the better. Business was good, and people from all over the world came west to cash in on it. Huge ranches evolved, often run by corporations overseas. Swan Land and Livestock, headquartered at Chugwater, controlled parts of three states. Moreton Frewen, an Englishman, built a castle on his huge place on Powder River. Wildlife was rapidly being displaced from much of Wyoming. Wildlife animals were viewed largely as a commodity. They could be killed at any time, for food, for sport, or to provide marketable goods.

Much of Wyoming's wildlife was extirpated during this era. The buffalo simply could not fit in. As long as there were buffalo, there could be Indians, wolves, and grizzlies. The wisdom of the day held that it was the duty of good, Christian people to civilize the Indian or destroy him. The same wisdom viewed the extinction of wolves and grizzlies as a necessary part of civilizing the wilderness west of the Missouri.

The exploitation and extirpation of wildlife and the range went on through most of the 1800s. In the last quarter of the nineteenth century, though, things began to change. Many of the behemoth ranches crashed into financial ruin, victims of poor range

> "Landowners began to wonder, 'What's in it for me?' The first thing is $780,000 in landowner coupons."

management and worse economic management. In their place came homesteads—smaller ranches, bounded with barbed wire and juniper posts. Farmers came to Wyoming, and shortgrass sod was broken to grow wheat. Cornfields sprang up in the river bottoms. Agriculture grew more intensive.

At the same time, the first stirrings of the conservation movement were felt. In 1899, it became illegal to kill buffalo (the last remaining wild one was shot in 1895!). Seasonal restrictions and limits were imposed on the harvest of game animals. Hunting licenses came into being. Yellowstone National Park was created. In this time of agricultural growth and ecological consciousness-raising, the uneasy partnership between wildlife and agriculture in Wyoming was forged.

The widespread exploitation of wildlife through unrestricted harvest and habitat loss left the wildlife resource a shadow of its former self. Through the next sixty to seventy years, many wildlife populations grew steadily as a result of the newly-born science of game management. At the same time, more and more of Wyoming was fenced, plowed and devoted to increasingly intensified agriculture. The seeds of conflict were sown. With the game populations on the increase and the livestock market going nowhere fast, many Wyoming landowners began to wonder, "What's in it for me?" The idea that wildlife was a competitor with livestock on private lands was born.

In the last fifteen years, Wyoming's population has grown at an unprecedented rate. New residents far outnumber Wyoming natives in most of our cities. Like the old residents, these new residents want and need outdoor recreation. For many of them, hunting and fishing were at least part of the reason they came here. So, hunter and fishermen numbers increase each year. At the same time, in an effort to maintain control over their land, landowners began to restrict access to more land. To the question, "What's in it for me?", was added, "Do I really have to put up with all these people?"

The first question is, obviously, not an unreasonable one. Much of Wyoming's wildlife is dependent for at least some of the habitat it needs on privately owned surface. For example, about fifty-eight percent of the forage consumed by antelope in this state is on private surface. If you total all the big game species, about forty-four percent of the forage they consume annually is on private surface. At an objective level, these big game animals might consume up to 630,000 animal unit months (an animal unit month is the amount of forage consumed by one cow/calf "unit" in one month) of forage on private land each year. These figures are based on forage consumption by cows and converted purely on the basis of body weight, assuming that big game animals eat exactly the same foods as a cow. We know that's untrue, but the comparison does provide some idea of the value of forage on private lands. Still, the question, "What's in it for the landowner?" remains.

The first thing that's in it for the landowner is direct compensation through redemption of landowner coupons. On every deer and antelope license sold in Wyoming, there is a landowner coupon. When a hunter harvests a deer or an antelope on private land, he or she signs the coupon and gives it to the landowner. The landowner then redeems it to the Game and Fish Department for $8.00 per coupon. We paid about $780,000 in landowner coupons last year. Recently, the Department has, in cooperation with several agricultural organizations, proposed a system whereby the ag industry would be paid directly by the Game and Fish Department for forage consumed on private lands rather than recouping those costs through landowner coupons. There are a number of problems associated with the coupon system, and the idea of payments for forage compensation administered by the agricultural community itself may have some real benefits for everyone.

The second thing that is in it for the landowner is control of wildlife damage. Virtually all species of wildlife are capable of damaging crops. Wyoming law holds the Game and Fish Department accountable for damage to property by big or trophy game animals or game birds. If these animals damage a landowner's property, he or she may promptly notify the Game and Fish Department and submit a claim for reimbursement of the damages. We paid about $215,000 in damage claims last year. Further, we have seven full-time damage control wardens whose primary responsibility is the prevention and control of wildlife damage to private property. This, of course, does not mean that game wardens have no damage control responsibility. Our game wardens alone put in about 2,000 man-days on damage control activities last year at a cost of about $200,000.

There are a number of other compensations to landowners for the part they play in providing wildlife habitat, too. Landowners do not have to draw for limited quota licenses. Depredation seasons are established to control damage on private lands by big game animals. The law permits them to kill trophy game animals, beavers, bobcats, weasels, squirrels, or muskrats doing damage to property. These compensatory measures have evolved through the years largely through the political strength of the ag industry in Wyoming.

The second question, "Do I really have to put up with these people?" is also a reasonable one. It's also one that is becoming a more controversial subject as Wyoming's wide open spaces grow fewer and farther between. The sanctity of private land ranks above both motherhood and apple pie in Wyoming tradition. The right of the individual to own and control his own property is a cornerstone of our lives. Wyoming law does nothing to abridge these rights. The Game and Fish Department is obligated to control wildlife damage on private lands open or closed to public hunting. Although damage claims may only be paid on lands where hunting is allowed, no qualification is made as to how much hunting or what sort of trespass fee is charged to hunt. On private land, the owner doesn't have to put up with hoards of hunters. As long as a landowner permits some hunting, Wyoming laws allow that he or she may legally collect on all the compensations we listed above.

As new residents have moved into Wyoming in the last decade, the system governing wildlife and hunting on private land has created greater controversy. First, many of these new residents hail from states where agricultural interests wield a much smaller political stick than they do in Wyoming. Landowners in many of these states are not compensated for wildlife damages, nor are they provided any particular dividends for providing wildlife habitat. Similarly, access may be a different matter, and the same etiquette that served just fine "back home" will land you a tongue-lashing, a punch in the nose, or maybe even a trespassing charge in Wyoming! At the same time, the recreational demands being created by this swelling human population are increasing. More

> "On the same habitat that produces $10,000 worth of beef, a prudent manager could make $20,000 from deer hunting."

people are out in search of outdoor recreation. In an effort to control this tide, access to much of the private and mixed public-private lands has been shut off by landowners. Urban sportsmen with little emotional tie to agriculture have become increasingly resentful of these limits to access. They are likely to become more resentful—and more politically powerful—as their numbers continue to grow. The access issue, and the deeper conflict between the urbanite's need for wildlife-related recreation and the landowner's right to own and control his own property, are likely to be an increasingly controversial issue.

The issue is one of land use. Is it better to manage land for recreation and wildlife or for agricultural production? It is at least arguable that one could make more money and do less harm to natural systems by managing land for wildlife and recreation. Much of Wyoming is simply not good agricultural land by most standards. We grow only a fraction of a percent of the nation's grain. Our climate is ill-suited to the production of most row crops. Despite our cowboy image, we do not rank high in the production of red meat in the U.S. Wyoming is on the marginal edge of agriculture in the U.S. because it is too dry, too cold, and too rough to support a greater ag industry. However, much of it is country that will support wildlife like nowhere else in the United States. On the same habitat that produces $10,000 worth of beef in a cow/calf ranching operation, a prudent manager could make at least $20,000 from deer hunting and perhaps $100,000 in nonconsumptive use of wildlife. The production of wildlife would be much less labor intensive, would require only a fraction of the capital, and would be significantly more resistant to fluctuations in demand. The need for herbicides, pesticides, and other environmental contaminants would be reduced. Sedimentation in streams would be reduced as grass cover increased due to decreased grazing pressure. Riparian habitat would improve, providing more wildlife diversity than existed previously. All in all, such an operation could be sound ecologically and financially. I am idealist enough to envision such an operation, but not naive enough to believe that banks all over the West will be knocking down the door to lend money on one!

Agriculture is firmly rooted in Wyoming, and not likely to go to any trouble to adopt the idea of producing wildlife instead of livestock and crops. Perhaps a more realistic solution is a combination operation, based on the production of wildlife and livestock. At any rate, the value of wildlife on private lands represents a valuable resource that deserves a great deal of consideration. The operator who denies wildlife a significant role in the management of his or her farm or ranch is making a serious economic and ecological mistake.

What is the future of agriculture and wildlife in Wyoming? For the short-term, I believe the conflict will escalate. Our state is changing. Our population is growing, and the people of our state are becoming largely residents of urban areas. They are gradually losing touch with the state's agricultural roots. They have a great desire for wildlife-related recreation and less space to satisfy that desire in. They are likely to be increasingly intolerant and resentful of limitations to access to public lands. Landowners, for their part, are likely to be increasingly resentful of their declining political base and increasingly intolerant of the rising tide of citified hunters and fishermen, and wildlife aficionados beating on the door. They may respond by tightening the access door even tighter and viewing wildlife with an increasingly jaundiced eye. They may see fewer benefits in providing wildlife habitat in managing their livestock operations. The result will be increased polarization, more conflict, and certainly a more difficult role for this department and other resource management agencies. A sportsman-landowner cold war may be in the offing.

Eventually, though, I think we can break this deadlock. In the long term, I think we'll resolve these differences. It will take some reordering of our thinking. It will take some pride-swallowing and some give-and-take. Sportsmen in Wyoming will have to learn that hunting on private land is a privilege that they will have to pay for in order to provide a financial incentive for landowners to provide such an experience. Landowners in Wyoming will have to learn that public land belongs to the public and that the public must be allowed free access to it. Both sides will have to throw out a few traditional ideas about management. Both sides will have to learn that wildlife can play a very significant, long-term economic and ecological role in the future of this state. Wildlife habitat has just as much reason to exist on private land as on public land. Agriculture and wildlife habitat maintenance and development can, and should, work together.

It may take some time. It will, undoubtedly, take some shouting and hollering and arguing. The conflicts will not be easy to iron out. But the alternative is to argue as wildlife and wildlife habitat decline in our state. I don't think any of us want to see that.

A native of southwest Wyoming, Walt Gasson served as district biologist in Gillette before moving to Cheyenne as staff biologist.